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ABSTRACT

This guide provides summaries and citations of federal and state court decisions covering five important areas of school governance in education. A one-paragraph summary and a full citation of each court decision are offered. An alphabetical listing of cases with page references is included at the end of each of the sections. The first section features decisions concerning local school board operation, including board meetings, board enactments and decisions, and judicial review of board actions. The second section discusses court decisions on state and regional boards and board officers, including constitutional and statutory provisions, state boards and officers, county boards and officers, and district and other local officials. The third section covers school district contractual, statutory, and tort liability. In the fourth section, court decisions on local school boards are reviewed, including school board elections, school board members, and board powers and functions. The fifth section includes court decisions concerning the creation, alteration, and dissolution of school district organizations: legislative powers and responsibilities, district's legal status and scope of authority, consolidation and merger in school district reorganization, minor alteration of boundaries in school district reorganization, and judicial review of school districts. (JPT)

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Case Citations
1993
FIFTEENTH SERIES (SCHOOL GOVERNANCE)

Edited by Charles J. Russo, Assistant Professor
College of Education, University of Kentucky

Number 1 — Local School Board Operation, *Donald Verling*

Number 2 — State and Regional Boards and Board Officers, *Joan Cursio*

Number 3 — School District Liability, *P. Tyson Bennett*

Number 4 — Local School Boards, *Joseph McKinney*

Number 5 — School District Organization: Creation, Alteration and Dissolution, *Jay Worona* and *Pilar Sokol*

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LOCAL SCHOOL BOARD OPERATIONS

FIFTEENTH Series, Number 1

Prepared by Donald F. Uerling, J.D., Ph.D., Associate Professor
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Board Meetings

Notice of Meetings

A school board violated the Open Meeting Law by posting notice that it would consider a request for additional space for a Head Start Program but not mentioning that this might entail the closing of an elementary school and merging it with another. Although the law provided that the board could expand the agenda by a two-thirds vote, it had not affirmatively voted to do so before taking up the substantive proposal. ***Hayes v. Jackson Parish Sch. Bd.***, 603 So. 2d 274 (La. Ct. App. 1992).

A gathering of a board of education and superintendent in another state to deliberate about a school clustering plan was a "meeting" under the Public Meetings Act such that the notice provided was insufficient to satisfy the requirements of the law; however, where the decision to adopt the plan was made at a subsequent meeting held in accordance with the requirements of the Act, the board's determination was upheld. ***Neese v. Paris Special Sch. Dist.***, 813 S.W.2d 432 (Tenn. Ct. App. 1990), *appeal denied*, (Tenn. 1990).

Under the Open Meetings Act, "employment of personnel" failed to provide full notice of the subject matter of a meeting with respect to the appointment of three principals about which there would be much public interest; however, the caption adequately notified the public about several less important professional positions. The defective notice rendered voidable only those specific actions taken in violation of the act, not all actions at the meeting; thus, the hiring of the principals was voided, but the hiring of the other personnel was not. ***Point Isabel Indep. Sch. Dist. v. Hinojosa***, 797 S.W.2d 176 (Tex. Ct. App. 1990).

An association seeking to become the bargaining representative for school employees brought suit, contending that the school board failed to provide adequate advanced notice of a special meeting wherein the contract with the incumbent bargaining organization was ratified. The board moved consideration of this item from a scheduled 12:00 noon meeting to a 7:30 a.m. meeting, but did not provide the kind of advance notice required for a non-emergency meeting. Accordingly, it failed to prove that there was an actual emergency obviating the 24-hour advance notice requirement for a special meeting. ***Oregon Ass'n of Classified Employees v. Salem-Keizer Sch. Dist. 24J***, 767 P.2d 1365 (Or. Ct. App. 1989), *appeal denied*, 773 P.2d 774 (Or. 1989).

Informal Gatherings and Discussions

A selection committee appointed by the superintendent to assist in the selection of a nominee for principal was not a governmental body for purposes of the Open Meeting Law since it was neither created nor regulated by statute or by-law and was informally appointed by the superintendent to assist in a task he could perform entirely free from the requirements of the law. ***Connelly v. School Comm. of Hanover***, 565 N.E.2d 449 (Mass. 1991).

A dismissed probationary teacher stated a complaint where members of the board of education violated the Freedom of Access Act by discussing the non-renewal of her contract outside of a regularly scheduled meeting; while informal discussions were not unlawful, public proceedings could be conducted in private executive sessions only in very limited circumstances. However, where she failed to submit the motion and detailed statement required by law to determine whether a trial was necessary, the teacher waived her right to a trial. ***Marxsen v. Board of Directors, M.S.A.D. #5***, 591 A.2d 867 (Me. 1991).

A board of education met with its administrative staff but did not provide public notice reasoning that because it met only to receive information it was not a meeting under the Freedom of Information Act. However, where the statutory definition of a meeting was "the convening of a quorum ... to discuss or act ... " and the record reflected that the board engaged in discussion of matters over which it had authority, it was found to have convened a meeting. Thus, it should have given public notice. ***Braswell v. Roche***, 383 S.E.2d 243 (S.C. 1989).

A social gathering of school board members at the superintendent's house prior to a regularly scheduled meeting of the board of education did not violate the Open Meetings Act since it was the kind of informal assemblage excepted under the act. ***Bundren v. Peters***, 732 F. Supp. 1486 (E.D. Tenn. 1989).

Private gatherings of a quorum of a board of education at which "what was going on at the schools" was discussed only incidentally did not violate the Open Meetings Law since they were not meetings within the meaning of the law. Also, where the law required minutes be kept for a reasonable time after a meeting, not forever, one year was reasonable. ***Harris v. N. Aquist***, 771 P.2d 637 (Or. Ct. App. 1989).

A taxpayer unsuccessfully sought to overturn a school board's decision to adopt an annual budget authorizing a five mill property tax increase in part on the ground that it violated the Sunshine Act when

members discussed the budget during a recess. Even assuming that board members did informally discuss the budget, this did not violate the law since it does not prohibit informal discussion and debate about matters on the agenda. ***Conners v. West Greene Sch. Dist.***, 569 A.2d 978 (Pa. Commw. Ct. 1989), *appeal denied*, 581 A.2d 574 (Pa. 1990).

Where a school board voted in April to nonrenew a teacher's contract and in June the principal met with seven of nine school board members, one or two at a time, to discuss the matter, the teacher contended that these meetings violated the Open Meetings Law. Neither the public nor the teacher were prejudiced because the meetings occurred after the nonrenewal vote had been taken at a regular open meeting. ***Retzlaff v. Grand Forks Pub. Sch. Dist. No. 1***, 424 N.W.2d 637 (N.D. 1988).

Closed Sessions

Following a discussion in executive session, a school board reconvened in public and voted to accept the superintendent's recommendations concerning disciplinary action against teachers and principals, but would not disclose the specific actions to be taken. Under the public meeting provisions of the Freedom of Information Act, executive sessions were authorized for discussions of personnel matters, but could not be used to shield public employees from disclosure of the substance of a board action; also, the disciplinary actions were not exempt from disclosure as confidential records of teacher performance and evaluation. ***Rose v. Freedom of Info. Comm'n***, 602 A.2d 1019 (Conn. 1992).

An attorney's letter to a superintendent over the decision to exclude alumni submissions from future issues of a school magazine constituted a pending claim within the meaning of the Freedom of Information Act. Thus, it was permissible for the board to discuss the letter in executive session as strategy and negotiations with respect to pending claims and litigation. ***Board of Educ. of Town of Ridgefield v. Freedom of Info. Comm'n***, 585 A.2d 82 (Conn. 1991).

A board of education sought declaratory judgment that a prior board's actions over the public sale of school property violated the Open Meetings Act and School Code. Although the board violated the act by holding an executive session to decide that the sale should be postponed, it was cured by its subsequently holding public meetings relating to the sale. Also, even if the board had violated the school code, it was estopped from asserting its own violation as ground for rendering the sale contract void. ***Board of Educ. Sch. Dist. No. 67 v. Sikorski***, 574 N.E.2d 736 (Ill. App. Ct. 1991), *appeal withdrawn*, 587 N.E.2d 1012 (Ill. 1992).

An informal closed meeting of a school board finance committee violated the Open Meetings Law because even though it had been legally called and could have been converted into an executive session, no such action was taken. However, an executive session of the full board to discuss litigation and options regarding attendance zones satisfied the litigation exception for a closed meeting; the board was operating under a federal court decree and any zoning changes required federal approval. ***Norris v. Monroe City Sch. Bd.***, 580 So. 2d 425 (La. Ct. App. 1991).

Teachers who had been discharged brought suit, alleging, *inter alia*, violations of the Open Meeting Law because the board of education had held several closed meetings. Where board members violated the law, the correct standard to determine if a fine should have been imposed is whether the violation was intentional, not willful and deliberate. Moreover, to determine if removal from office is appropriate, the proper standard is whether the violations, not the meetings, are unrelated and separate. ***Willison v. Pine Point Experimental Sch.***, 464 N.W.2d 742 (Minn. Ct. App. 1991).

Where citizens have an absolute right under the state constitution to attend and observe a meeting held by a public body or state agency to discuss strategy for potential litigation against another state government entity, the Board of Public Education was not permitted to hold a closed meeting to discuss possible litigation against the Governor, even though such a discussion appeared to be authorized by law as an exception to the general requirement of open meetings. ***Associated Press v. Board of Pub. Educ.***, 804 P.2d 376 (Mont. 1991).

A school board member who brought suit against the board, alleging that it engaged in wrongful acts concerning its contract with the superintendent, could be excluded from an executive session where the matter was discussed but not from one where the underlying public issue was the subject of his legal action. The dispute was not governed by the Open Public Meetings Act, but by general common law principles on participation of public officials in matters of personal interest. ***Scotch Plains-Fanwood Bd. of Educ. v. Syvertsen***, 598 A.2d 1232 (N.J. Super. Ct. App. Div. 1991).

Although a school board could meet with its attorney in a closed session to discuss a pending controversy with a teacher, to the extent that it reached a decision or deliberated toward one, it was a meeting subject to the Open Meetings Act. Thus, where evidence suggested that the board violated the law

by approving conditions for the continued employment of the teacher in a closed meeting, the attempted settlement was void and of no effect. ***Van Hooser v. Warren County Bd. of Educ.***, 807 S.W.2d 230 (Tenn. 1991).

Where a board of education discussed its reasons for dismissing a probationary teacher in an executive session and returned to an open session for a final vote, it did not violate the Open Meetings Act. Further, because the complaint was not filed prior to or within 45 days after the meeting, as required by law, the issue was waived. ***Verticchio v. Divernon Community Unit Sch. Dist. No. 13***, 555 N.E.2d 738 (Ill. App. Ct. 1990).

Closure of a school board hearing over a grievance against an assistant school administrator was justified when he refused to waive his right to privacy; there was no showing of any public interest to be served by an open meeting but there was a substantial showing of a legitimate privacy interest by the employee. His right of personal privacy, recognized in the state constitution and Open Meeting Laws, outweighed the public's right to know. Thus, there was no violation of the Law. Also, closing the meeting was not an unconstitutional prior restraint. ***Flesh v. Board of Trustees of Joint Sch. Dist. No. 2, Mineral and Missoula Counties***, 786 P.2d 4 (Mont. 1990).

Where a school board's discussion of candidates to fill vacancies in its ranks fit within an exception from the open meetings provision of the Freedom of Information Act permitting a public agency to go into executive session to discuss appointments of public officers, its actions were proper. ***Board of Educ. of City of Danbury v. Freedom of Info. Comm'n***, 566 A.2d 1362 (Conn. 1989).

A board of education did not violate the Open Meetings Act when it construed closed session exceptions by applying the fair and sensible statutory interpretation and the substantial compliance requirement of the law. Accordingly, it properly entered a closed session to discuss topics related to independent contractors, goals of a superintendent's office, mediation in contract negotiations, and prohibitions against administrators speaking to the media after having provided notice of these topics by a general reference to "Executive Session—personnel, negotiations and legal matters." ***Gosnell v. Hogan***, 534 N.E.2d 434 (Ill. App. Ct. 1989), *appeal denied*, 541 N.E.2d 1106 (Ill. 1989).

Although a screening committee was required to comply with the Open Meeting Law in conducting interviews of applicants for a school superintendency, the initial paper screening was not a prior preliminary screening within meaning of the statute. Thus, candidates could be interviewed in executive session pursuant to an exception where an open meeting would be detrimental to obtaining qualified applicants and their identities need not be disclosed. ***Gerstein v. Superintendent Search Screening Comm.***, 541 N.E.2d 984 (Mass. 1989).

Where a school committee's discussion and approval of a plan to search student lockers for drugs clearly implicated security matters, it was properly conducted in closed sessions as it fell within a statutory exception to the Open Meeting Law. ***Rhode Island Affiliate, ACLU, v. Bernasconi***, 557 A.2d 1232 (R.I. 1989).

A board of education did not violate the Open Meetings Act by its discussions in an executive session related to the failure of four administrators to inform it about a disparity between dollar amounts on bids submitted and figures placed on the ballot for a bond election regarding asbestos removal. The law provided for executive sessions to discuss personnel matters of nonelected personnel, and it would have been burdensome and impractical, if not impossible, to segregate the topics into open and closed sessions for discussion. ***State v. Board of Educ. of Unified Sch. Dist. No. 305***, 764 P.2d 459 (Kan. Ct. App. 1988).

Where state law provided that prior to a hearing over the possible cancellation of a teacher's contract the supporting reasons were confidential employment matters not to be released to the public or news media and a board called such a special meeting, it complied with both the terms and spirit of the law when it opened the meeting, went into closed session, returned to open session, and voted to consider a contract cancellation for reasons authorized by law. ***Stephens v. Board of Educ. of Sch. Dist. No. 5***, 429 N.W.2d 722 (Neb. 1988).

Where a school district board of trustees violated the Open Meetings Law by failing to provide adequate notice of an executive session, by not establishing a statutory exemption for another, and by not publishing minutes for either session, any actions voted on at these executive sessions were voided. ***Previdi v. Hirsch***, 524 N.Y.S.2d 643 (N.Y Sup. Ct. 1988).

A school board's discussion in executive session of budget cuts involving personnel in general was not a valid exception to the Sunshine Law because the purpose of the exception is to protect an individual's reputation and privacy. The violation was cured by subsequent open meetings where the board initially discussed matters in an executive session that should have been discussed in public. ***Gannett Satellite Info. Network, Inc. v. Chillicothe City Sch. Dist. Bd. of Educ.***, 534 N.E.2d 1239 (Ohio Ct. App. 1988).

Other Considerations

After members of a board of education refused to allow members of the public to tape record a regularly scheduled meeting, the State filed a misdemeanor information, charging them with a violation of the Open Meeting Act. However, where the statute was impermissibly vague as to whether this conduct was prohibited and therefore criminal, the information did not state an offense chargeable under state law. ***State v. Patton***, 837 P.2d 483 (Okla. Crim. App. 1992).

A newspaper publisher had standing to bring suit against a school district for alleged violations of the Sunshine Act based on both the plain language of the act and traditional standing principles. ***Press-Enterprise, Inc. v. Benton Area Sch. Dist.***, 604 A.2d 1221 (Pa. Commw. Ct. 1992).

Where a board member was ousted from office for having cast a deciding vote to hire a relative in violation of the statutory eligibility requirements, the lapse of twenty-six months between the violation and the action did not prevent his removal since there was sufficient evidence in the minutes of the board's meeting which stated clearly what had occurred. ***Cross v. Commonwealth ex rel. Cowan***, 795 S.W.2d 65 (Ky. Ct. App. 1990).

An education association unsuccessfully challenged an administrative reorganization plan on the ground that it was considered and discussed in violation of the Sunshine Act. The plan had been discussed extensively in public and delaying its implementation would have been harmful; also, the action was not brought until after the time limit specified in the Act. ***Bradford Area Educ. Ass'n v. Bradford Area Sch. Dist.***, 572 A.2d 1314 (Pa. Commw. Ct. 1990).

A board of education's departure from the requirements of the Open Public Meetings Act at a meeting where a suit challenging the appointment of two new board members was authorized was cured by a resolution at a subsequent public meeting which expressly ratified, reaffirmed, and restated the earlier resolution. ***Board of Educ. of City of Orange Township v. Brown***, 558 A.2d 520 (N.J. Super. Ct. App. Div. 1989).

Where the lawful purposes for executive sessions called by a school committee under the Open Meetings Law were to discuss the dismissal of and litigation with a former employee, there was no longer any lawful purpose after he resigned and the litigation was terminated. ***Foudy v. Amherst-Pelham Regional Sch. Comm.***, 521 N.E.2d 391 (Mass. 1988).

A voter unsuccessfully challenged a special meeting of the board of education convened to vote on two resolutions pertaining to reconstruction and improvement of buildings and grounds on the contention that it was the same as a vote that failed at a prior meeting; the two resolutions were not the same as the one that had previously failed although they related to the same general subject. ***Neuman v. Cornwall Cent. Sch. Dist.***, 524 N.Y.S.2d 1005 (N.Y. Sup. Ct. 1988).

Board Enactments and Decisions

Bylaws

A dismissed probationary teacher was not deprived of his due process rights when one of three adverse witnesses refused to appear at a review hearing because the committee used its best efforts to get the witness to attend pursuant to the by-laws and a special circular that were binding on the board of education; also, there was other adequate proof to support the dismissal. ***Swartz v. Board of Educ. of Sch. Dist. of City of New York***, 536 N.Y.S.2d 500 (N.Y. App. Div. 1989).

Where the state legislature did not require an enhanced majority on such a vote, a school board was able to lawfully adopt a plan, which included the closing and sale of a school building, by a majority vote of its full membership even though its bylaws called for adoption by a two-thirds vote; however, the bylaw requiring action on non-emergency matters of policy to be considered at two public meetings was binding. ***Matawan Regional Teachers Ass'n v. Matawan-Aberdeen Regional Sch. Dist. Bd. of Educ.***, 538 A.2d 1331 (N.J. Super. Ct. App. Div. 1988).

Policies

Where the legislature mandated a 7.5% pay increase for support workers in public schools based on the previous year's actual salary, exclusive of local increments, and a board of education adopted a new pay schedule including a base salary, a manager's supplement, and a manager's bonus, it was bound to follow both its adopted policies and the required 7.5% increase even though it resulted in a total raise of 46% for one lunchroom manager. ***Ex parte Etowah County Bd. of Educ.***, 584 So. 2d 528 (Ala. 1991).

Since a school board's policy has the force of law, a board must comply with its own rules. Accordingly, a dismissed principal could not complain that the board failed to follow its nonrenewal policy when

he failed to cooperate with it. ***Nordhagen v. Hot Springs Sch. Dist. No. 23-2***, 474 N.W.2d 510 (S.D. 1991).

School district policies, especially those negotiated with bargaining representatives for the protection of teachers, have the full force and effect of law, such that they legally bind a district. Thus, where a board adopted teacher vacancy/transfer provisions in a negotiated agreement, it was bound to consider only the factors listed therein. ***Wessington Springs Educ. Ass'n v. Wessington Springs Sch. Dist. #36-2***, 467 N.W.2d 101 (S.D. 1991).

Where a state board of education and department of education were agencies for the purposes of the Administrative Procedure Act, their failure to follow appropriate procedures in the adoption and promulgation of regulations under which an applicant was denied a teaching certificate rendered the regulations invalid and unenforceable. ***Department of Educ. v. Kitchens***, 387 S.E.2d 579 (Ga.App. 1989), *cert. vacated, sub. nom.*, ***State Dep't of Educ. v. Kitchens***, 389 S.E.2d. 244 (Ga. 1990).

A teacher who was dismissed for contravening school policy and administrative directives by promoting religious beliefs in the classroom was not deprived of procedural due process by the school board's failure or refusal to answer his interrogatories about district standards and guidelines where the hearings before the local agencies were governed by two specific state statutes, neither of which provided for discovery. ***Rhodes v. Laurel Highlands Sch. Dist.***, 554 A.2d 562 (Pa. Commw. Ct. 1988).

Decisions

Where a school board rejected a hearing officer's conclusion of law and found a bus driver guilty of misconduct for swerving her bus toward a student who provoked her, it had the authority under the Administrative Procedures Act to reject or modify conclusions of law. Thus, where a dispute arose not about the findings of fact but over whether they could support the charge of misconduct and the board's finding of misconduct involved the infusion of policy considerations, it properly constituted a conclusion of law that the board was free to reject. ***Goss v. District Sch. Bd. of St. Johns County***, 601 So. 2d 1232 (Fla. Dist. Ct. App. 1992).

Where a school board expelled a student for fighting with another student as well as for pushing and threatening a staff member, it was subject to the Administrative Procedure Act under which an agency decision that determines the substantial interests of a party must be rendered through a final written order. Accordingly, absent a written order of expulsion there was nothing for the court to review and there were no legal obstacles to the student's return to classes. ***Mitchell v. Leon County Sch. Bd.***, 591 So. 2d 1032 (Fla. Dist. Ct. App. 1991).

A board of education is a statutorily created corporation with a continuing legal existence so that activities conducted by its members do not become null and void due to a change in membership; also, voting rights on whether to close a school were not limited to members who constituted the quorum at a prior public hearing on the matter. ***Haynes v. Board of Educ. of County of Kanawha***, 383 S.E.2d 67 (W.Va. 1989).

Judical Review Of Board Actions

Employment Matters

Where the scope of review under the Teacher Employment and Dismissal Act is limited to whether the grounds for termination of employment are supported by substantial evidence, a school board had sufficient evidence to support the dismissal of a special education teacher for slapping a handicapped student and for failing to maintain classroom control. ***Hendrickson v. Spartanburg County Sch. Dist. No. 5***, 413 S.E.2d 871 (S.C. Ct. App. 1992).

Where a school board employed a superintendent under the mistaken belief that he was endorsed for the position and there was an adequate record of the hearings that led to his dismissal, his contract was voidable and his dismissal lawful. ***Maasjo v. McLaughlin Sch. Dist. 15-2***, 489 N.W.2d 618 (S.D. 1992).

A board of education properly dismissed a teacher for sexual abuse of students where it followed the proper procedures and there was substantial evidence to support its decision. Also, although the board's decision was based in part on hearsay, there was a sufficient residuum of other corroborating evidence to justify its determination. ***Hinkle v. Garrett-Keyser-Butler Sch. Dist.***, 567 N.E.2d 1173 (Ind. Ct. App. 1991).

A school board acted properly when it demoted a principal who was guilty of neglect of duty to a position as a classroom teacher since the proceedings it used complied with the authority and formality of the Teachers Tenure Act, its decision was supported by substantial evidence, and was not arbitrary. ***Baker v. St. James Parish Sch. Bd.***, 584 So. 2d 369 (La. Ct. App. 1991), *cert. denied*, 588 So. 2d 1118 (La. 1991).

Where a hearing officer misconstrued a collective bargaining agreement and a school board relied on that interpretation to place a teacher on an unrequested leave of absence, the teacher was reinstated due to the ambiguity of the contract as a matter of law and because the board erred in determining the teacher's seniority status. ***Fredrich v. Independent Sch. Dist. No. 720***, 465 N.W.2d 692 (Minn. Ct. App. 1991).

A tenured teacher was properly dismissed for disorderly conduct and a one time violation of school board regulations since such action was both authorized by law and supported by competent and substantial evidence upon the whole record; also, the board's failure to rule on the teacher's motion to strike some charges did not invalidate its decision that also rested on other charges. ***Cotherine v. Board of Educ. of City of St. Louis***, 822 S.W.2d 881 (Mo. Ct. App. 1991).

While a state statute expressly excepts local boards of education from the coverage of the Administrative Procedure Act, its standards for judicial review were applied to an appeal from a school board's decision to dismiss a high school teacher who engaged in sexual relations with a student. The teacher's dismissal was proper where the board's decision was supported by substantial evidence in view of the entire record. ***Evers v. Pender County Bd. of Educ.***, 407 S.E.2d 879 (N.C. Ct. App. 1991), *aff'd per curiam*, 416 S.E.2d 3 (N.C. 1992).

Where a board of education acted within the limits of its authority in terminating a principal's employment contract, his action was properly dismissed for lack of subject matter jurisdiction since he failed to exhaust administrative remedies before bringing suit. ***Mitchison v. Houston Indep. Sch. Dist.***, 803 S.W.2d 769 (Tex. Ct. App. 1991).

A State Board of Education erred when it reached its own findings of fact, contrary to its own rules of appellate review, after a local board dismissed a superintendent for good cause. Although the local board's belief that dismissal was required to restore community confidence was not good cause, its finding that there was good cause to cancel the superintendent's contract due to his failure to properly handle the district's fiscal affairs was supported by substantial evidence. ***Board of Educ. of Smyrna Sch. Dist. v. DiNunzio***, 602 A.2d 85 (Del. Super. Ct. 1990), *aff'd without pub. opinion, sub nom.*, ***DiNunzio v. Board of Educ. of Smyrna Sch. Dist.***, 584 A.2d 1228 (Del. 1990).

Where substantial evidence in the record as a whole supported a school board's decision to discharge a psychometrist, who was a tenured teacher, as part of a reduction in force, it did not violate the state's tenure laws. ***Stewart v. Fort Wayne Community Sch.***, 564 N.E.2d 274 (Ind. 1990), *cert. denied*, 112 S.Ct. 169 (1991).

Since evidence on remand supported a board of education's dismissal of a principal on grounds of insubordination, neglect of duty, incompetence and inefficiency, it also warranted his termination as a tenured teacher because the charges reflected adversely on his ability to subject himself to the authority of others as well as on his ability to perform work assignments in an efficient and competent manner. ***Cooper v. Williamson County Bd. of Educ.***, 803 S.W.2d 200 (Tenn. 1990), *cert. denied*, 111 S.Ct. 2013 (1991).

The Act for Judicial Review and Civil Enforcement of Agency Actions did not apply to a school board's decision to dismiss a tenured teacher as part of a reduction in force where it acted as a quasi-judicial body, its decision was supported by substantial evidence, and it did not act fraudulently, arbitrarily, or capriciously. ***O'Hair v. Board of Educ., Unified Sch. Dist. No. 300***, 805 P.2d 40 (Kan. Ct. App. 1990).

A tenured teacher who was denied a personal leave day for a job interview, went on the interview, and later claimed illness as the reason for his absence was properly terminated for insubordination. The board acted within the scope of its authority since there was no evidence that it acted fraudulently, arbitrarily, or capriciously, and the single incident, along with the dishonesty about the reason for the teacher's absence, constituted substantial evidence to support the finding of insubordination warranting dismissal. ***Gaylord v. Board of Educ., Unified Sch. Dist. No. 218***, 794 P.2d 307 (Kan. Ct. App. 1990).

Where there was no clear showing of abuse of a school board's authority in its classification of instructional supervisors and the superintendent's recommendations as to the employment classifications were approved by the board, there was no reason for the courts to interfere with its management. ***Beason v. Rapides Parish Sch. Bd.***, 558 So. 2d 281 (La. Ct. App. 1990), *cert. denied*, 561 So. 2d 117 (La. 1990).

Where a former superintendent nominated herself for and was subsequently employed by the school board to fill a vacant principalship after she lost her bid for reelection, it was a "local controversy" because only one school board was involved. Thus, the administrative remedy provided by statute for resolving local controversies had to be exhausted before it became a matter for the courts. ***Bacon v. Brewer***, 395 S.E.2d 383 (Ga. Ct. App. 1990).

A teacher unsuccessfully sought declaratory judgment after the school district refused to reinstate

her because she worked as a long-term substitute for another district during an extended leave of absence. Absent evidence that the board's determination was fraudulent, arbitrary, or unreasonable, unsupported by substantial evidence, or based on an error of law, the constitutional principles of separation of powers required the judiciary to refrain from *de novo* review of such an administrative decision. ***Dokmo v. Independent Sch. Dist. No. 11, Anoka-Hennepin***, 459 N.W.2d 671 (Minn. 1990).

Where the standard of review of a school board's decision is, in part, whether it was based upon an erroneous theory of law and a school district misconstrued the applicable teacher reinstatement statute which required it to make reasonable realignments of personnel and positions to protect seniority rights, a teacher was ordered reinstated. ***Harms v. Independent Sch. Dist. No. 300, LaCrescent***, 450 N.W.2d 571 (Minn. 1990).

Although school boards are vested with a presumption that their actions are correct and the burden is on the contestant to prove otherwise, where a teacher who was discharged for immorality and insubordination was able to establish that one school board member was biased against him, it was sufficient to taint the entire board's decision-making process. Thus, he was entitled to compensatory damages in his section 1983 action on the ground that he was denied due process in his dismissal proceeding, regardless of whether the bias affected the correctness of the board's decision to terminate his employment. ***Crump v. Board of Educ. of Hickory Admin. Sch. Unit***, 392 S.E.2d 579 (N.C. 1990).

Where a business manager whose contract was terminated by a school board brought suit rather than appeal the decision within 90 days as required by law, the statutory appeal was her exclusive means of challenging her dismissal; when such an appeal is not timely, a court lacks the jurisdiction to adjudicate the legality of a school board's decision. ***Reiff v. Avon Sch. Dist. No. 4-1***, 458 N.W.2d 358 (S.D. 1990).

Since there was no credible evidence to support a school board's claim that a tenured teacher was discharged as part of a reduction in force based on economic necessity, it was reasonable to conclude that its action was a subterfuge to dismiss him for engaging in constitutionally protected union activities. ***Temple v. Board of Educ. of Sch. Dist. No. 94***, 548 N.E.2d 640 (Ill. App. Ct. 1989).

A school board properly demoted a principal to a teaching position where the adversarial hearing in which it reached its decision was properly reviewed by the courts as a contested case and based on a review of the record as a whole the board's findings of unsatisfactory performance were supported by competent and substantial evidence; also, a one-day delay in delivery of the notice of demotion was substantial compliance with statute as no one was misled. ***Franklin v. Board of Directors, Sch. Dist. of Kansas City***, 772 S.W.2d 873 (Mo. Ct. App. 1989).

Since a school board failed to introduce its reduction in force policy at a hearing and the evidence it produced did not establish that a change in circumstances necessitated a reduction in force specifically related to the teacher in question, the board's decision was vacated. ***Trolson v. Board of Educ. of Sch. Dist. of Blair***, 424 N.W.2d 881 (Neb. 1988).

A school board acted within its jurisdiction where there was sufficient evidence supporting its dismissal of a teacher for failing to return her signed contract by the deadline date specified therein and both parties understood what the return date was to be. ***Niedbalski v. Board of Educ. of Sch. Dist. No. 24 of Platte Center***, 418 N.W.2d 565 (Neb. 1988).

Regardless of whether an appeal was from a quasi-judicial action of a school board, which was subject to *de novo* review, or of a nonjudicial action, which was to determine whether its decision was arbitrary, capricious, or contrary to law, a 30-day time limit for appeals applied. Thus, a teacher's appeal of an employment decision brought two years later as a breach of contract action was time barred. ***Haynes v. Seattle Sch. Dist. No. 1***, 758 P.2d 7 (Wash. 1988), *cert. denied*, 109 S.Ct. 1129 (1989).

Where a school board's written opinion stated two reasons for dismissing an administrator and there was substantial evidence to support one valid reason, its decision was not disturbed. ***Spradlin v. Board of Trustees of Pascagoula Mun. Separate Sch. Dist.***, 515 So. 2d 893 (Miss. 1987).

Student Affairs

A school board properly suspended students for consuming alcohol prior to participating in a school activity for their violation of a rule which prohibited them from "being under the influence" of alcohol while under school jurisdiction. The board was clearly authorized to promulgate such a rule; its construction and interpretation of "under the influence" as including contemporary use, rather than requiring actual change in behavior, was not an abuse of discretion; and, a finding of alcohol consumption based on the students' admission was sufficient evidence to support its decision. ***Rohrbaugh v. Elida Local Bd. of Educ.***, 579 N.E.2d 782 (Ohio Ct. App. 1990).

A high school student unsuccessfully appealed his expulsion after a hearing before the board of education at which he admitted possession of drug paraphernalia on school grounds. The order of expulsion did not constitute arbitrary, capricious, or unreasonable action but was based on his violation of the stated policy and was supported by a preponderance of substantial, reliable, and probative evidence on the whole record. ***Cross v. Princeton City Sch. Dist. Bd. of Educ.***, 550 N.E.2d 219 (Ohio Com. Pl. 1989).

Where a board of education changed a grade that a teacher gave a student, its was required to render specific findings of fact, based upon evidence presented at closed sessions, to support its decision. ***Eureka Teachers Ass'n v. Board of Educ. of Eureka City Sch.***, 244 Cal. Rptr. 240 (Cal. Ct. App. 1988).

Boundary Changes and School Closings

Where a petition brought by parents who sought to detach their property from one school district and annex it to another was approved by one school board but not the other, the regional superintendent's denial was proper since it was supported by substantial evidence. ***Carver v. Bond/Fayette/Effingham Regional Bd. of Sch. Trustees***, 586 N.E.2d 1273 (Ill. 1992).

A school board's decision to close a school was proper where it measured up to a fair test of reason; even though the facts and circumstances were such that reasonable people could differ as to the wisdom and expediency of the decision, the board's determination must be upheld absent a clear abuse of discretion. ***Gamble v. Williamsburg County Sch. Dist.***, 408 S.E.2d 217 (S.C. 1991).

A school board's denial of a resident's request for a minor boundary change was reversed because it acted arbitrarily and capriciously where the petitioner's business, social, and religious activities were almost entirely in the other school district which was much closer to his residence and there were no sound arguments against the change. ***Kellogg v. Hoven Sch. Dist. No. 53-2***, 479 N.W.2d 147 (S.D. 1991).

The Commissioner of Education properly granted a request for the detachment and annexation of territory from one school district to another after it was approved by one county but denied by the other: the Commissioner properly conducted a *de novo* hearing, the results of which were reasonably supported by substantial evidence. ***Clear Creek Indep. Sch. Dist. v. Commissioner of Educ.***, 775 S.W.2d 490 (Tex. Ct. App. 1989).

Other Considerations

The 30-day limit in state law regarding appeals of school board decisions did not apply to a trade name infringement action by a private school against a public school district since the limitation applied only to decisions that the board had the authority to make in the course of administering the schools; since the board had no authority to decide if its use of "Mountain View" infringed upon private school's trade name, the action was appropriate. ***Mountain View Sch. v. Issaquah Sch. Dist. No. 411***, 794 P.2d 560 (Wash. Ct. App. 1990), *appeal denied*, 803 P.2d 324 (Wash. 1990).

A joint venture's suit against a school district for a breach of an oral contract to lease a building could not be characterized as an appeal from the school board's decision so that the statute requiring a party to appeal within 30 days was inapplicable. ***State Street Office Bldg. v. Sedro Woolley Sch. Dist. No. 101***, 789 P.2d 781 (Wash. Ct. App. 1990).

The proper route for relief for a party aggrieved by a decision of a board of education acting in a judicial rather than an administrative capacity is to file a petition for a writ of *certiorari*. Thus, the board's motion to dismiss was granted; however, on a motion for reargument, the motion for suspension of the rules was granted to the extent that the notice of appeal was considered a motion for extraordinary relief and as such was remanded for further consideration. ***Campbell v. Manchester Bd. of Sch. Directors***, 565 A.2d 1318 (Vt. 1989).

The decision of a board of education acting in a quasi-judicial manner to certify and declare the result of a special school-tax referendum election was proper since it acted within the bounds of its jurisdiction and it complied with the requirements of the law. ***Spencer v. Smyrna Bd. of Educ.***, 547 A.2d 614 (Del. Super. Ct. 1988).

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Case Citations
STATE AND REGIONAL BOARDS AND OFFICERS

FIFTEENTH Series, Number 2

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Constitutional and Statutory Provisions

General Federal

A cleaner employed by a school board could not maintain a claim that it retaliated against her in violation of Title VII for filing a charge of sex discrimination with the State Division of Human Rights by failing to ask her whether she wanted to work overtime to clean up after asbestos removal. ***Aldrich v. Randolph Cent. Sch. Dist.***, 963 F.2d 520 (2d Cir. 1992).

A public school superintendent's rights to free speech and political association were not violated when he was relieved of his duties by school board members who were elected despite his active opposition; although his activities touched on matters of public concern, he occupied a confidential relationship and highlevel policy making position in relation to the board such that his actions precluded the establishment of an effective working relationship with it. ***Kinsey v. Salado Indep. Sch. Dist.***, 950 F.2d 988 (5th Cir. 1992).

An anti-nepotism statute precluding relatives of school district employees from serving as members of a local school board did not infringe on the First or Fourteenth Amendment rights of school board members or their supporters even though it prevented candidates who would not engage in nepotism from seeking office. ***Chapman v. Gorman***, 839 S.W.2d 232 (Ky. 1992).

A state law prohibiting school employees from taking part in "activities" of political campaigns for local school board elections was unconstitutionally vague and overbroad since people of common intelligence disposed to obey the law could not reasonably ascertain what conduct would amount to a violation. ***State Bd. for Elementary and Secondary Educ. v. Howard***, 834 S.W.2d 657 (Ky. 1992)

For the purpose of determining whether a school nurse was improperly transferred by a school district in retaliation for her exercise of her First Amendment rights, her communications were completed within the statutory period; however, she failed to establish a nexus between her protected speech and subsequent transfer for the purposes of Section 1983. ***Stever v. Independent Sch. Dist. No. 625, St. Paul***, 943 F.2d 845 (8th Cir. 1991).

An employee's wearing of a religious head wrap was constitutionally protected religious and cultural expression such that the Employment Security Commission had no authority to deny her unemployment benefits on the basis that wearing such garb was insubordination constituting misconduct. ***Mississippi Employment Security Comm'n v. McGlothin***, 556 So. 2d 324 (Miss. 1990), *cert. denied*, 111 S. Ct. 211 (1990).

School officials could not require the removal of a Bible from an elementary school library, but it could require the teacher to remove religiously oriented books from his classroom library and to keep his Bible out of sight and refrain from silent reading of it during classroom hours. ***Roberts v. Madigan***, 921 F.2d 1047. (10th Cir. 1990), *cert. denied*, 112 S. Ct. 3025 (1992).

School authorities did not have an affirmative duty under the due process clause to prevent alleged sexual abuse by a teacher such that the breach of this duty gave rise to a liberty interest claim absent a showing that requiring children to attend school rendered them incapable of caring for themselves. ***J.O. and P.O. v. Alton Community Unit Sch. Dist. 11***, 909 F.2d 267 (7th Cir. 1990).

A school secretary's transfer of her daughter to private school was protected under the First Amendment and penumbra of familial privacy rights such that when the school district, through its superintendent, assigned her to a less responsible, more menial job at the same wage, it violated her civil rights. ***Fyfe v. Curlee***, 902 F.2d 401 (5th Cir. 1990), *cert. denied*, 111 S. Ct. 346 (1990).

Failure by school officials and teachers to prevent the fatal shooting of a student did not deprive his parents of any constitutional right to familial association as the government did not intend to change the relationship between the parents and their son. ***Arroyo v. Pla***. 748 F. Supp. 56 (D.P.R. 1990).

A former school police officer's statement at a co-worker's fair employment hearing that he did not know whether marijuana found in his van belonged to her was not a matter of public concern sufficient to preclude his firing by the Department of Education despite his claim that his employment was terminated for speaking out on sexual discrimination; the statement was made solely to further his interests and those of his co-worker, not to advance public debate on employment discrimination, drug policy, or any other topic. ***Arvinger v. Mayor and City Council of Baltimore***, 862 F.2d 75 (4th Cir. 1988), *rev'd without published op.*, 894 F.2d 401 (4th Cir. 1990).

Although a nurse's speech in speaking against the school district's medication policy touched on a matter of public concern, it was not constitutionally protected because it was needlessly disruptive of the

district's health service programs. ***Johnsen v. Independent Sch. Dist. No. 3 of Tulsa County, Okla.***, 891 F.2d 1485 (10th Cir. 1989).

A statutory provision prohibiting certain municipal employees, political party office holders, and elected officials from being community school board members violated neither freedom of association under the First Amendment nor the Voting Rights Act. ***Fletcher v. Marino***, 882 F.2d 605 (2d Cir. 1989).

A state superintendent of instruction, acting in his official capacity, was entitled to absolute immunity from tort and section 1983 claims made by a supervisory school employee relating to conduct allegedly calculated to deter him from exercising his right to free speech. However, his allegation that local school officials engaged in a series of measures designed to deter him from commenting on a matter of public interest stated sufficient deprivation of constitutional rights to raise a Section 1983 claim. ***Berlin v. Superintendent of Pub. Instruction***, 448 N.W.2d 764 (Mich. Ct. App. 1989).

A state statute precluding membership on county school board to any member of any political party executive committee did not violate equal protection or First Amendment principles. ***Carpenter v. Cobb***, 387 S.E.2d 858 (W. Va. 1989).

A state statute limiting a school district's appointment of a superintendent to a term not to exceed five years did not prevent the parties from entering into a contract governing the terms and conditions of employment during the period of his appointment. ***Courtemanche v. Enlarged City Sch. Dist. of Middletown, N.Y.***, 686 F. Supp. 1025 (S.D.N.Y. 1988).

While school officials are entitled to exercise discretion within the bounds of state and contract law, this discretion is subject to constraints under the federal constitution and statutory law. Thus, where a former reading department chair alleged sufficient facts to bring her speech within the ambit of the First Amendment, school district officials were not entitled to a dismissal on the basis of qualified immunity. ***Cromley v. Board of Educ. of Lockport Township High Sch. Dist. 205***, 699 F. Supp. 1283 (N.D. Ill. 1988).

A state law which required local school boards to monitor whether school-aged children attend a school approved by the county superintendent of schools and the superintendent of instruction did not violate the due process clause of the Fourteenth Amendment; although the local board had a financial interest in having students attend public school, it had no decision-making power as to whether to approve non-public schools. ***State v. Anderson***, 427 N.W.2d 316 (N.D. 1988).

Federal Due Process

Allegedly derogatory public comments about a discharged teacher made by school board members and the superintendent of schools did not violate a teacher's right to due process since he faced no threat of the loss of his employment because he had already been fired. ***Vukadinovich v. Board of Sch. Trustees of Michigan***, 978 F.2d 403 (7th Cir. 1992).

Neither the employment contract nor state law under which a teaching consultant was dismissed endowed him with any due process property interest in his continued employment that would have entitled him to a statement of reasons for the nonrenewal of his contract; his contract required only that he be given a one year notice in advance that his employment would end. ***Short v. School Admin. Unit No. 16***, 612 A.2d 365 (N.H. 1992).

The fact that about one third of the duties of the new position as assistant superintendent of personnel were previously performed by the director of pupil personnel services was sufficient to require a finding that the board could have known that there was a substantial possibility that the director might have possessed the substantive right to the new position. Thus, the failure of the board to hold a hearing on the issue of similarity violated due process. ***Goldberg v. Board of Educ. of the Hempstead Sch. Dist.***, 777 F. Supp. 1109 (E.D.N.Y. 1991).

Since a teacher's aide was not a "teacher" within the meaning of pretermination hearing statute, she had no property interest in continued employment, and was not entitled to appeal the school board's decision to dismiss her. ***Harrison County Sch. Bd. v. Morreale***, 538 So. 2d 1196 (Miss. 1989).

A school board did not deprive its superintendent of a property interest without due process of law when it voted to terminate his employment contract; also, the publicity surrounding his dismissal did not deprive him of a liberty interest in his occupation. ***Adams v. School Dist. No. 5 of Jackson County, Or.***, 699 F. Supp. 243 (D. Or. 1988).

A regulation defining "immediate family," as used in statute generally proscribing a school board from employing members of the immediate family of board member to include brothers and sisters was valid. Thus, the employee who was terminated by the school district after the State Commissioner of Education refused written approval of his contract was

not denied due process. ***Degnan v. Bering Strait Sch. Dist.***, 753 P.2d 146 (Alaska 1988).

A school security guard's pretermination meeting with a supervisor satisfied the requirements of procedural due process even though the supervisor had no actual authority to terminate his employment because with the discovery of a falsehood on the guard's application, his honesty was at issue; he was thus subject to immediate dismissal. ***Loudermill v. Cleveland Bd. of Educ.***, 844 F.2d 304 (6th Cir. 1988), *cert. denied* 488 U.S. 941 (1988).

A school board's decision to remove a superintendent based on charges of ineffective leadership and lack of communication with school personnel did not implicate a liberty interest. Thus, his due process rights were not violated where the board had sufficient cause to remove him based on evidence that he used school funds improperly, neglected school buildings and grounds, and failed to carry out directives of the board. ***Bristol Virginia Sch. Bd. v. Quarles***, 366 S.E.2d 82 (Va. 1988).

Where school managers who were dismissed from their positions had no vested property interests in the continued employment, they did not suffer the loss of procedural due process deprivation when they were dismissed by the Department of Education without a hearing. ***Carrasquillo v. Aponte Rogue***, 682 F. Supp. 137 (D.P.R. 1988).

A board of education's alleged reliance on a high school principal's letter of resignation in advertising for his replacement was insufficient to prevent the principal from withdrawing his letter before the board formally acted upon it. ***Nuzum v. Board of Educ. of the Sch. Dist. of Arnold***, 417 N.W.2d 779 (Neb. 1988).

Federal Equal Protection

Where a former superintendent failed to demonstrate that the reasons given by a school board for the non-renewal of his contract were a mere pretext for age discrimination, he was not denied equal protection. ***Murray v. Mount Pleasant***, 754 F. Supp. 535 (E.D. Tex. 1990), *aff'd without pub. op.*, 928 F.2d 402 (5th Cir. 1991).

Provisions of the Chicago School Reform Act which caused unequal powers of voting in local school council elections violated the equal protection guarantees of the federal and state constitutions; however, the Act's differing treatment of teachers from principals and subdistrict superintendents with regard to continuing employment did not violate equal protection. ***Fumarolo v. Chicago Bd. of Educ.***, 566 N.E.2d 1283 (Ill. 1990).

A school committee's general counsel fell within the ambit of "nonacademic" workforce. Thus, the position was subjected to the affirmative action plan incorporated in the court-ordered desegregation plan requiring a racial preference for eligible, qualified black candidates. ***Drinkwater v. School Comm. of Boston***, 550 N.E.2d 385 (Mass. 1990).

When an unsuccessful applicant for promotion within the school district brought suit under Title VII and Section 1983, claiming that the denial violated her rights, the school district's affirmative action plan, awarding the job to an applicant only in the event of a tie, was not violated by the appointment of a white male where there was no tie. ***Yatvin v. Madison Metro. Sch. Dist.***, 840 F.2d 412 (7th Cir. 1988).

A school district violated equal protection and federal civil rights laws against race discrimination when it canceled the employment contract of a white social worker but retained a black administrator in the position the white worker would have been entitled to under the district's *de facto* seniority system; it was unable to produce any evidence that anything other than the scarcity of blacks in the workforce was responsible for the racial imbalance in its staff. ***Cunico v. Pueblo Sch. Dist.***, 693 F. Supp. 954 (D. Colo. 1988).

State Provisions

Provisions under state law provided sufficient due process in connection with the removal of a member of the state board of education from his elected position despite his claim that he was not afforded an adequate opportunity for a hearing. ***Brickner v. Voinovich***, 977 F.2d 235 (6th Cir. 1992).

The prohibition in the state constitution against arbitrary action applied to public school officials including school boards and school superintendents in their assertion or attempted exercise of power; however, teachers were properly transferred where there was no evidence of arbitrariness and they suffered no loss in pay or fringe benefits. ***Board of Educ. of Ashland v. Jayne***, 812 S.W.2d 129 (Ky. 1991).

A state constitutional provision prohibiting state subdivisions from incurring unapproved indebtedness did not preclude a finding of the existence of an employment contract for a maintenance worker to perform continuing work for a school district extending beyond a single budget year as the contract fell

under the ordinary and necessary expenditures exception. ***Ray v. Nampa Sch. Dist. # 131***, 814 P.2d 17 (Idaho 1991).

Claims arising out of contract, the state whistleblower statute, and state constitution against a board of education did not arise under the state's education laws so as to confer jurisdiction over the dispute upon the State Commissioner. ***Picogna v. Board of Educ. of the Township of Cherry Hill, Camden County***, 592 A.2d 570 (N.J. Super. Ct. App. Div. 1991).

The State Commissioner of Education's monitoring function under the Public School Education Act, although designed to measure and achieve a thorough and efficient education for all public school children, was unconstitutional for failure to accomplish that goal and operated largely as a self-improvement system; the Commissioner did not evaluate the adequacy of the curriculum to the needs of children, the relationship of the curriculum to a thorough and efficient education, or the quality of any offering. ***Abbott v. Burke***, 575 A.2d 359 (N.J. 1990).

A school superintendent not only followed established district policy but also complied with federal law when he refused to release the names and addresses of students and their parents to a private citizen where there was evidence that the district had a special education plan which provided directory information that could be released without parental consent even though the plan did not contain any provisions concerning public notice or comments by parents as required by federal law. ***Brent v. Paquette***, 567 A.2d 976 (N.H. 1989).

A school superintendent's politically motivated abolition of administrative positions and transfers of administrators to teaching positions based on their opposition to him during his election campaign were arbitrary and capricious. Thus, they violated the Tennessee Teachers Tenure Act. ***Bundren v. Peters***, 732 F. Supp. 1486 (E.D. Tenn. 1989).

A constitutional provision on the powers of the State Board of Education did not divest the governor of statewide policymaking and executive powers or authority over the executive budget; the governor could allow the Department of Budget and Finance to make detailed decisions on the allocation of the education budget, could restructure the Board's program priorities, and could impose a 1% spending restriction on the Department of Education. ***Board of Educ. of the State of Haw. v. Waihee***, 768 P.2d 1279 (Haw. 1989).

A state law which denied school cafeteria workers tenure under any tenure laws of the public school system did not unconstitutionally impinge on their rights of equal protection. ***Winston v. Orleans Parish Sch. Bd.***, 545 So. 2d 1174 (4th Cir. 1989).

An elementary school technical aide was entitled to a formal hearing under the state Administrative Procedure Act concerning the school board's decision to terminate her employment since its decision concerned her substantial interest and her petition demonstrated that material issues were in dispute. ***Taylor v. School Bd. of Seminole County***, 538 So. 2d 150 (Fla. Dist. Ct. App. 1989).

Pursuant to the provisions of the Fair Dismissal Law which excluded a superintendent of schools from its provisions, the Fair Dismissal Appeals Board did not have jurisdiction to hear a superintendent's appeal of his termination. ***Babbitt v. Mari-Linn Sch. Dist. No.29-J***, 764 P.2d 954 (Ore. Ct. App. 1988), *reh'g denied*, 772 P.2d 1341 (Ore. 1989).

State Boards and Officers

Functions and powers

Refusal by a State Commissioner of Education to approve an order issued pursuant to the Family Court Act is subject to review by way of a special proceeding. ***United Cerebral Palsy v. Sobol***, 582 N.Y.S.2d 558 (N.Y. App. Div. 1992).

A State Commissioner of Education has broad constitutional and legislative powers over public education which must be interpreted sufficiently expansively to correspond with his high responsibilities. ***Board of Educ. of the Borough of Englewood Cliffs, Bergen County v. Board of Educ. of the City of Englewood, Bergen County***, 608 A.2d 914 (N.J. Super. Ct. App. Div. 1992).

Local school boards are subject to the powers of the State Board of Elementary and Secondary Education to exercise its supervision and control over public schools pursuant to laws passed by the legislature. ***Eiche v. Louisiana Bd. of Elementary and Secondary Educ.***, 582 So. 2d 186 (La. 1991).

While the State Department of Education has broad responsibility for establishing policies regarding the regulation of public schools, its regulations must be consistent with state law. ***Fairbanks North Star Borough Sch. Dist. v. NEA-Alaska***, 817 P.2d 923 (Alaska 1991).

A State Board of Education is not required to follow a referee's recommendations where the referee's primary purpose is to serve as the finder of fact; the board reviews any findings and determines

the conclusions of law. ***Stelzer v. State Bd. of Educ.***, 595 N.E.2d 489 (Ohio Ct. App. 1991).

The State Board of Education was not required to exhaust administrative remedies before seeking a court order to enforce its rules or in seeking a declaration that contracts adopted in violation of its rules were contrary to public policy or the state constitution. ***State v. Whittle Communications***, 402 S.E.2d 556 (N.C. 1991), *reh'g denied*, 404 S.E.2d 878 (N.C. 1991).

The ultimate responsibility for assuring compliance with federal law, including the Education for the Handicapped Act, rests with the State Board of Education. ***Community Consol. Sch. Dist. No. 54 v. Illinois State Bd. of Educ.***, 576 N.E.2d 250 (Ill. App. Ct. 1991).

The Commissioner of Education lacked authority to award counsel fees in determining controversies and disputes presented to him under Education Law; however, he had authority to award such fees under the Law Against Discrimination after hearing a petition charging sex discrimination in a public school. ***Balsley by Balsley v. North Hunterdon Regional Sch. Dist. Bd. of Educ.***, 568 A.2d 895 (N.J. 1990).

A State Board of Regents has broad powers to adopt standards and qualifications for teacher certification; however, it exceeded its authority when, based on amended requirements, it canceled teacher certificates prior to their expiration dates. ***Reback v. Rhode Island Bd. of Regents for Elementary and Sch. Secondary Educ.***, 560 A.2d 357 (R.I. 1989).

For the purposes of substantial evidence review, questions of statutory interpretation reached by the State Commissioner of Education are questions of law which are not entitled to a presumption of validity. ***Hightower v. State Comm'r of Educ.***, 778 S.W.2d 595 (Tex. Ct. App. 1989).

A State Board and Department of Education were "agencies" required to follow administrative procedures for adoption or amendment of rules. Thus, their failure to adhere to the regulations pursuant to which an applicant was denied a teaching certificate rendered the regulations invalid and unenforceable against the teacher. ***Department of Educ. v. Kitchens***, 387 S.E.2d 579 (Ga. Ct. App. 1989).

Rule making by the State Board of Education is within the meaning of "general supervision" of state schools, vested in it by the state constitution so that any statutory provision interfering with such rule-making is unconstitutional. ***West Virginia Bd. of Educ. v. Hechler***, 376 S.E.2d 839 (W. Va. 1988).

Procedures

An appeals court has the jurisdiction to hear an appeal from a decision of the State Board of Education. ***Haig v. Ohio State Bd. of Educ.***, 584 N.E.2d 704 (Ohio 1992).

The legislative delegation to the State Board of Education and Commissioner of Education to establish rules relating to hearing controversies includes the right to establish time limits within which appeals may be brought. ***Kaprow v. Board of Educ. of Berkeley Township***, 604 A.2d 640 (N.J. Super. Ct. App. Div. 1992).

A State Board of Education's interpretation of its own regulations should be given great weight when subject to judicial review. ***Pasadena Unified Sch. Dist. v. State Bd. of Educ.***, 4 Cal. Rptr.2d 532 (Cal. Ct. App. 1992).

The filing of a notice of an appeal in court within the 30 days required by law was timely such that an appellant did not also have to file a notice off claim with the agency clerk. ***Broxton v. State Bd. of Educ.***, 601 So. 2d 1292 (Fla. Dist. Ct. App. 1992).

When a determination of the state Commissioner of Education is appealed, the scope of judicial review is limited to whether it was arbitrary and capricious or whether it lacked a rational basis. ***O'Connor v. Sobol***, 577 N.Y.S.2d 716 (N.Y. App. Div. 1991).

Although the statutorily mandated finality of a State Board of Education's review of a local board's decision precludes a regular appeal of a state board's decision, judicial review is not eliminated. ***Petition of Dunlap***, 604 A.2d 945 (N.H. 1991).

A State Board of Education's review of appeals from decisions of local boards is limited to determining whether substantial evidence existed in the record to support the decision. Thus, while a local board could not rely on its belief that the discharge of the superintendent of schools was necessary to restore the community's confidence and to pass a tax referendum, there was sufficient cause to support his discharge for failure to handle properly the school's budgetary and fiscal affairs. ***Board of Educ. of the Smyrna Sch. Dist. v. DeNunzio***, 602 A.2d 85 (Del. Super Ct. 1990).

County Boards and Officers

Selection/ Election/ Dismissal

Although several allegations in a recall petition against a member of a county school board were insufficient, the remaining allegation was stated with

adequate particularity to inform the public and the board member of the substance of the complaint. ***Hamlett v. Hubbard***, 416 S.E.2d 732 (Ga. 1992).

A state constitutional amendment indicating that "county officers" are ineligible to succeed themselves after two successive terms does not apply to a superintendent of a county school district. ***Bradfield v. Wells***, 415 S.E.2d 638 (Ga. 1992).

Where the whole record test was applied to a county board of education's decision not to renew a teacher's contract and its level of inquiry was sufficient to meet state law, she had no statutory right of appeal. ***Spry v. Winston-Salem/Forsyth County Bd. of Educ.***, 412 S.E.2d 687 (N.C. Ct. App. 1992).

A county superintendent of schools who knowingly and willfully misapplied public funds without intent to benefit from his actions engaged in misconduct for the purposes of the ouster statute without regard to his motives. ***State ex rel. Estep v. Peters***, 815 S.W.2d 161 (Tenn. 1991).

A superintendent of schools and a county board of education were not liable to a student for the negligent hiring and retaining of a principal who allegedly assaulted her even though he had previously resigned from another school after being accused of sexually assaulting a student; they neither knew nor could not have reasonably known of the principal's pedophiliac tendencies prior to the alleged assault. Also, recommendations received about the principal prior to his hiring gave no indication that he would behave in such a manner. ***Medlin v. Bass***, 398 S.E.2d 460 (N.C. 1990).

An incumbent member of a county board of education who was elected from one district could not change his residence on the filing date or thereafter to a second district and retain his seat on the board to the exclusion of a person who had already filed to run for that vacant seat. ***Adkins v. Smith***, 408 S.E.2d 60 (W. Va. 1991); *see also* ***Smith v. County Comm'n of McDowell County***, 400 S.E.2d 572 (W. Va. 1990).

A school administrator employed by a county board of education whose position is eliminated or otherwise affected by a reduction in force could not use seniority to laterally transfer by "bumping" another administrator unless certification or licensing is required for the position the individual seeks to obtain. ***Board of Educ. of the County of Harrison v. Bowers***, 396 S.E.2d 166 (W. Va. 1990).

A county superintendent neither wilfully neglected his duty nor was insubordinate within the meaning of state law when he refused to recommend a candidate to the board of education for a vacant coaching position because he needed more information in order to make the recommendation. Further, his dismissal without written charges, notice, or formal hearing resulted in denial of the due process of law such that he could procure reinstatement by peremptory writ of mandamus. ***State v. Wyoming County Bd. of Educ.***, 375 S.E.2d 25 (W. Va. 1988).

Members of a county board of education who violated state law by approving payments by the board to their private employers for supplies or services furnished to the board were properly removed from office for their actions. ***Summers County Citizens League, Inc. v. Tassos***, 367 S.E.2d 209 (W. Va. 1988).

Powers and duties

A county school board abused its discretion in dismissing a custodian for gross insubordination where he did not refuse to obey a direct order of the principal even though he was disrespectful and attempted to create friction and disagreement between the principal and other employees. ***Rosario v. Burke***, 605 So. 2d 523 (Fla. Dist. Ct. App. 1992).

Members of a county board of education were not liable in their individual capacities for the alleged misuse of the proceeds of a bond issue where the complaint did not specifically allege any acts that were corrupt, malicious, outside of the scope of their authority. ***Moore v. Wynkle***, 419 S.E.2d 164 (N.C. Ct. App. 1992).

A school board's three month probationary period for classified employees shortened the three year probationary period subsequently established by state law. Thus, a cafeteria worker who had worked more than three months was no longer a probationary employee and was entitled to a pretermination notice and a hearing. ***Kendrick v. Jefferson County Bd. of Educ.***, 932 F.2d 910 (11th Cir. 1991).

While a county board of education has substantial discretion in matters relating to hiring, assignment, transfer, and promotion of school personnel, it must exercise its judgment in a manner which is in the best interest of the schools. ***Board of Educ. of the County of Wood v. Enoch***, 414 S.E.2d 630 (W. Va. 1992), *see also*, ***Hyre v. Upshur County Bd. of Educ.***, 412 S.E.2d 265 (W. Va. 1991); ***Pockl v. Ohio County Bd. of Educ.***, 406 S.E.2d 687 (W. Va. 1991).

A county school board had discretion to set a school superintendent's salary by applying a statutory index to a nine month teaching contract rather that a 12 month contract. ***Reeder v. Geneva County Bd. of Educ.***, 586 So. 2d 222 (Ala. Civ. App. 1991).

Where authority is vested in a county board of education and not the county superintendents, whether elected or appointed, a superintendent is not a public officer within the meaning of the state constitutional provision prohibiting retirement pay to public officers. ***Edmonds v. Bronner***, 894 F.2d 1277 (11th Cir. 1990).

When a county board of education member cast the deciding affirmative vote for his relative, he became ineligible to hold office as a board member; the statute precluded board members from casting a vote regarding the employment of specified relatives except when a majority of the remainder of the board voted in the affirmative. ***Cross v. Commonwealth ex rel. Cowan***, 795 S.W.2d 65 (Ky. Ct. App. 1990).

A county school board rule authorizing the superintendent to suspend employees under certain circumstances for up to three days was a valid delegation of legislative authority. ***School Bd. of Collier County v. Florida Teaching Profession Nat'l Educ. Ass'n***, 559 So. 2d 1197 (Fla. Dist. Ct. App. 1990); *rev. denied* 576 So. 2d 286 (Fla. 1990).

A county board of education abused its discretion by hiring a teacher who was certified in general science and mathematics to fill a position in gifted education rather than a candidate who was specifically certified by the state to teach gifted education. ***Johnson v. Cassell***, 387 S.E.2d 553 (W. Va. 1989).

The position of superintendent of schools was construed as a school official within the meaning of state law, thereby allowing a county school board to pay a superintendent for attorney fees incurred as a result of clearing himself of alleged civil and criminal wrong doing. ***Wood v. Board of Supervisors of Halifax County***, 372 S.E.2d 611 (Va. 1988).

Compensation

Currently elected members of county boards of education were employees within meaning of the statute authorizing membership in the Public Employees Retirement System. ***State ex rel Dilley v. West Virginia Pub. Employees Retirement Sys.***, 401 S.E.2d 916 (W. Va. 1991).

A school administrator was not a "new teacher" at the time he entered his final contract and was not entitled to district-credited service under the operative collective bargaining. Thus, he did not meet the requirements for years of district-credited service to qualify for a voluntary career option plan. ***Throssell v. Board of Trustees of Gallatin County Sch. Dist. No. 7***, 812 P.2d 767 (Mont. 1991).

Where competent substantial evidence supported a finding that a retired school board finance officer subsequently acted as an independent contractor rather than as an employee of a different school board, the Department of Administration was not entitled to recover retirement benefits paid to him. ***Davis v. Department of Admin., Div. of Retirement***, 585 So. 2d 421 (Fla. Dist. Ct. App. 1991).

A county school board employee was entitled to terminal pay for accumulated sick leave she earned in the county in which she retired even though she did not have ten years of employment there since she had ten years of creditable service when years of work in another county were included. ***Pitts v. Bay County Sch. Bd.***, 540 So. 2d 157 (Fla. Dist. Ct. App. 1989).

A county board of education was not entitled to immunity under the state constitution or common law governmental immunity; thus, where it paid a monthly salary supplement to similarly situated string instrument and band instrument teachers. Thus, it was required to pay the same supplement to the music teacher-choral director. ***Weimer-Godwin v. Board of Educ. of the County of Upshur***, 369 S.E.2d 726 (W. Va. 1988).

District and Other Local Officials

Employment decisions

The fact that school cafeteria workers were at-will employees did not preclude their being "public employees" under the state Whistle Blower Act. ***Knowlton v. Greenwood Indep. Sch. Dist.***, 957 F.2d 1172 (5th Cir. 1992).

A school board's policy over employment termination did not create an enforceable contract right as the employee in question did not receive a copy of the policy until after her employment had been terminated. ***Hohmeier v. Leyden Community High. Sch. Dist. 212***, 954 F.2d 461 (7th Cir. 1992).

For the purposes of tenure under state law, the term "teacher" does not include a city superintendent of schools. ***Mitchell v. Skinner***, 603 So. 2d 1023 (Ala. 1992).

Where a local school board substantially complied with all of the procedures established by its rules for the dismissal of nontenured employees, a dismissed cafeteria worker had no state or federally protected property interest in her continued employment. ***Harris v. West Carroll Parish Sch. Bd.***, 605 So. 2d 610 (La. Ct. App. 1992).

A change in the scheduled work hours of nonprobationary school custodians were neither transfers nor partial terminations within the meaning of the state Fair Dismissal Act for the purposes of determining whether they were entitled to a hearing on the matter. ***Ike v. Board of Sch. Commissioners of Mobile County, Ala.***, 601 So. 2d 1014 (Ala. Civ. App. 1992).

Public relations consultants were noninstructional personnel whose hiring by a school board was not, on its face, a violation of state law. ***Smith v. Dorsey***, 599 So. 2d 529 (Miss. 1992).

A letter by which a superintendent of schools which notified an assistant superintendent of his intention to recommend to the board of education the discontinuation of the latter's contract failed to satisfy notice of nonrenewal where it was not written on behalf of the board and it gave the clear indication that the issue had not yet been decided. ***State ex rel. Luckey v. Etheridge***, 583 N.E.2d 960 (Ohio 1992).

A school board is an elective body free to exercise its own discretion in deciding whom to terminate under staff reduction. ***Mackey v. Newell-Providence Community Sch. Dist.***, 483 N.W.2d 5 (Iowa Ct. App. 1992).

A school employee was not excused from the requirement to exhaust administrative remedies on the basis of informal steps taken by the school system to resolve their salary dispute. ***Bufford v. District of Columbia Pub. Sch.***, 611 A.2d 519 (D.C. App. 1992).

A custodian who was dismissed for insubordination when he reported alleged thefts from soft drink machines to school officials rather than the servicing company he was employed by was not a public employee within the meaning of the state whistleblower statute. Thus, he was not entitled to any of the safeguards and privileges of the law. ***Alasnzia v. Galena Park Indep. Sch. Dist.***, 833 S.W.2d 204 (Tex. Ct. App. 1992).

A school board properly terminated the employment of a senior custodian who falsely reported and verified his time sheets and those of another employee where its decision was supported by substantial evidence. ***Clark v. Canandaigua City Sch. Dist.***, 579 N.Y.S.2d 275 (N.Y. App. Div. 1992).

An assistant superintendent of schools whose position was eliminated was not entitled to the benefit of nonrenewal procedures for a teacher or principal even though he spent about 5% of his time as an acting principal and 50 to 60% of his time as an athletic director since he never served as a teacher and his primary relationship to the board was not that of a principal. ***Boschee v. Mandan Pub. Sch. Dist.***, 478 N.W.2d 276 (N.D. 1991).

Collateral estoppel did not preclude litigation of issues related to a school social worker's retaliatory discharge by a school board and free speech tort actions even though her conduct was litigated and decided during her discharge hearings where no discharge occurred at that time and the school board could not decide on the lawfulness of its own conduct as an employer. ***Graham v. Special Sch. Dist. No. 1***, 472 N.W.2d 114 (Minn. 1991).

A local board of education could not, without justification and in conflict with its past practice, require a school secretary to pass a performance based evaluation as a condition to allowing her to extend the retirement date specified in her notice of intent to retire. ***Hall v. Board of Educ. of the Township of Jefferson, Morris County***, 593 A.2d 304 (N.J. 1991).

A school district custodian who was an at will employee was not entitled notice of reasons for his dismissal under district policy. ***Medicine Horse v. Trustees, Big Horn County Sch. Dist. No. 27***, 823 P.2d 230 (Mont. 1991).

An employee review panel had the authority to reverse a board of education's termination of an employee and to modify his punishment. ***Birmingham Bd. of Educ. v. Holifield***, 604 So. 2d 422 (Ala. Civ. App. 1991)

A former assistant superintendent's Article 78 proceeding seeking to annul a board of education's abolition of that position was rendered moot by her resignation and retirement; the acceptance of her resignation terminated her employment relationship with the district such that she no longer possessed reemployment rights. ***Girard v. Board of Educ. of the City Sch. Dist. of Buffalo***, 572 N.Y.S.2d 185 (N.Y. App. Div. 1991).

A school district custodian remained a temporary and substitute employee despite his having worked eight hour days for several years where he received no employment-related benefits, was under no contract, was paid on a different cycle than contract personnel, and appeared on a school district's list of substitute custodians. ***Buckellew v. Board of Educ. of Georgetown-Ridge Farm Community Unit Sch. Dist. No. 4***, 578 N.E.2d 556 (Ill. App. Ct. 1991).

The resignation of a school secretary was effective when accepted by the superintendent and not when formally accepted by the board of education. Thus, the fact that the board did not formally accept her resignation until after the secretary submitted a

letter withdrawing her resignation did not make the resignation ineffective. ***Mitchell v. Jackson County Bd. of Educ.***, 582 So. 2d 1128 (Ala. Civ. App. 1991).

Where a school district terminated the contract of an administrator who served as both superintendent of schools and principal, it was solely a termination of her contract as superintendent where its defense was based on a lack of consideration due to her alleged failure to perform her duties as superintendent and the district did not use any of the procedures in state law to terminate her employment as principal. ***Kish v. Chilhowee R-IV Sch. Dist.***, 814 S.W.2d 649 (Mo. Ct. App. 1991).

A school board that discontinued a superintendent's full time equivalency tenured position, thereby placing him on an unrequested leave of absence could not reinstate him to a position with fewer rights. ***Jurkovich v. Independent Sch. Dist. No. 708, Tower-Soudan***, 478 N.W.2d 232 (Minn. Ct. App. 1991).

Under state unemployment law, a school district was the employer of assistants hired by a civil service employee who worked for the district and it was aware of this arrangement. ***In re Hodges***, 575 N.Y.S.2d 587 (N.Y. App. Div. 1991).

School personnel regulations and law are strictly construed in favor of employees. Thus, where the position of athletic trainer was found to be extracurricular, it required a separate job positing and employment contract. ***Cruciotti v. McNeel***, 396 S.E.2d 191 (W. Va. 1990).

A school board employee who committed a criminal act directly involving his occupational responsibilities was properly dismissed by the board; his good work record and community image were not controlling factors where his criminal conduct bore directly on his work-related responsibilities. ***Bledsoe v. Wyoming County Bd. of Educ.***, 394 S.E.2d 885 (W. Va. 1990).

Where an educator demonstrated the pretextual nature of reasons given by a school board in rejecting her application for promotion, the board should have been given the opportunity to rebut the presumption that its decision was retaliatory by having the opportunity to demonstrate that other candidates were better qualified. ***Jamison v. Rockaway Township Bd. of Educ.***, 577 A.2d 177 (N.J. Super. Ct. App. Div. 1990).

A school superintendent was a probationary certificated employee for the purposes of the law providing separate procedures for the non-renewal of contracts of probationary and tenured employees. Thus, he was entitled only to an informal hearing and to confidential treatment of notice and reasons supporting the possible non-renewal of his contract only at his request. ***Matrisciano v. Board of Educ. of Brady Sch. Dist. No.6, Lincoln County***, 459 N.W.2d 230 (Neb. 1990).

A school board's non-renewal of a superintendent for cause, accompanied by an offer for a public hearing, did not convert his non-renewal into a discharge that would require compliance with additional statutory procedures. ***Sailer v. Rhame Pub. Sch. Dist. No. 17***, 455 N.W.2d 588 (N.D. 1990).

Where a state Institution failed to timely acquire a list of qualified candidates to select one as a neutral member of a panel to review a decision to terminate a worker's employment, the discharged employee was entitled to back pay and reinstatement. ***Hutchinson v. Alabama Institute for Deaf and Blind***, 578 So. 2d 1312 (Ala. 1990) (*per curiam*) affirming. 578 So. 2d 1305 (Ala. Ct. Civ. App. 1990).

An employment contract between the wife of a school board member and the district in which she worked as a school nurse was not void as the indirect benefit received by the board member did not constitute a pecuniary interest violative of state law. ***Scherer v. Rock Hill Local Sch. Dist. Bd. of Educ.***, 579 N.E.2d 525 (Ohio Ct. App. 1990).

A school nurse employed by a public school district to work in a parochial school was not considered a full-time employee based on the number of hours she worked on a daily basis. Thus, the board was not required to credit her with additional seniority to prevent her employment from being terminated. ***Cole v. Board of Educ. of Syosset Cent. Sch. Dist.***, 562 N.Y.S.2d 209 (N.Y. App. Div. 1990).

Where a school district failed to notify an employee of his discharge prior to the expiration of his probationary period he became a permanent appointee who could not be discharged without a hearing. ***DeMeo v. Board of Educ. of the Massapequa Union Free Sch. Dist.***, 556 N.Y.S.2d 726 (N.Y. App. Div. 1990).

Even if a school board had just cause board to dismiss its superintendent of schools, its unilateral termination of her contract without first affording her due process as required under the terms of her contract constituted an unlawful breach negating her dismissal. ***Lewiston-Porter Cent. Sch. Dist. v. Sobol***, 546 N.Y.S.2d 227 (N.Y. App. Div. 1989); *appeal denied* 556 N.Y.S.2d 530 (1990).

An employee who failed to controvert evidence that he suffered from a continuing psychiatric disability which prevented his performance of the job he sought was not discriminated against by the State

Education Retirement System when he was denied reinstatement. ***Bolecek v. State***, 542 N.Y.S.2d 268 (N.Y. App. Div. 1989); *appeal denied*, 547 N.Y.S. 847 (1989), *reh'g denied*, 552 N.Y.S.2d 111 (1990).

Where substitute employees were not granted probationary status until after having been employed by a school district for 195 days, all of which must have been served within one school year, a probationary groundskeeper's employment was properly terminated until such time as he was hired as a probationary employee. ***California Sch. Employees Ass'n, Feather River Chapter No. 342 v. Oroville Union High Sch. Dist.***, 269 Cal. Rptr. 90 (Cal. Ct. App. 1990).

A school board acted properly when it stated with particularity its reasons for seeking to dismiss an employee who kissed a student and improperly issued hall passes rather than follow the superintendent's recommendation to suspend him. ***Allen v. School Bd. of Dade County***, 571 So. 2d 568 (Fla. Dist. Ct. App. 1990).

Where a school board followed statutory procedures in connection with a superintendent's dismissal, it had complete discretion in its decision. ***Tornow v. Board of Educ. of Indep. Sch. Dist. No. 118, Remer, Minn.***, 435 N.W.2d 142 (Minn. Ct. App. 1989).

Where a school board substantially complied with the statute providing for non-renewal of probationary teachers' contracts by giving a probationary superintendent of schools three written evaluations in his first year and one in his second year prior to notifying him of his dismissal, it was free to use its discretion in terminating his employment. ***Allen v. Board of Educ. of Indep. Sch. Dist. No. 582, Jasper, Minn.***, 435 N.W.2d 124 (Minn. Ct. App. 1989).

The term "years," as used in the state law providing that an individual ceases to be a probationary employee of a board of education no more than three years after the date of initial employment, refers to calendar and not school years. ***Uwakolam v. Huntsville City Bd. of Educ.***, 554 So. 2d 1036 (Ala. Civ. App. 1989).

A school board's failure to select a member of a review panel until after the expiration of the 60-day period required by law for a hearing constituted the abandonment of its attempt to terminate the employee. ***Washington v. Bessemer Bd. of Educ.***, 547 So. 2d 888 (Ala. Ct. Civ. App. 1989).

Where a school principal has no right of tenure to an administrative position, she could be removed by the board of education upon the recommendation of the superintendent for any reason that does not offend some right protected by the state or federal constitutions or state law. ***Hooks v. Smith***, 781 S.W.2d 522 (Ky. Ct. App. 1989).

A non-teaching employee hired as a temporary replacement for a regular school district employee could not achieve continuing contract status where eligibility for such a contract did not exist at the outset of the period covered by the contract. ***Blair v. Milford Exempted Village Sch. Dist. Bd. of Educ.***, 575 N.E.2d 1190 (Ohio Ct. App. 1989).

Where a board of education sought to terminate the employment of a probationary administrative employee, it was bound by provisions of her contract which gave her enhanced due process rights. ***Averback v. Board of Educ. of the New Paltz Cent. Sch. Dist., New Paltz, N.Y.***, 541 N.Y.S.2d 655 (N.Y. App. Div. 1989), *appeal denied* 546 N.Y.S. 555 (1989).

Where a school counselor who was a teacher under continuing contract made a misstatement to the Internal Revenue Service that he was an independent contractor, not a school employee, his action did not excuse a school board's failure to comply with the substantive and procedural requirements in its attempt to terminate his employment. ***Beine v. Board of Educ. of Cabell County***, 383 S.E.2d 851 (W. Va. 1989).

The employment contract of a superintendent of schools ended by operation of law when the term of office of the school board which executed the contract expired. Thus, his employment could be terminated at the will of the newly composed board. ***Hayden v. Richland Parish Sch. Bd.***, 554 So. 2d 164 (La. Ct. App. 1989), *writ denied*, 559 So. 2d 124 (La. 1990).

Where a board of education had sufficient evidence about a school psychologist's neglect of his professional duties, insubordination, and conduct unbecoming a teacher, his employment was properly terminated. ***Cohen v. Board of Educ. of the City Sch. Dist. of the City of Buffalo***, 533 N.Y.S.2d 28 (N.Y. App. Div. 1988).

School personnel regulations and laws are strictly construed in favor of employees such that where two teachers received notice of their termination a day or two prior to a hearing, this was insufficient notice and an opportunity to challenge their proposed dismissals. ***Farley v. Board of Educ. of County of Mingo***, 365 S.E.2d 816 (W. Va. 1988).

A teacher was entitled to tenure following her three-year employment as full-time substitute because where state law provided for tenure by operation of the law under such circumstances and the board of education failed to terminate her employ

ment prior to the expiration of the statutory period. ***Harkins v. Ohio County Bd. of Educ.***, 369 S.E.2d 224 (W. Va. 1988).

A school principal served at the pleasure of the school board such that it was free to transfer him without cause or evaluation. ***Quirk v. Board of Educ. of Moorpark Unified Sch. Dist.***, 244 Cal. Rptr. 924 (Cal. Ct. App. 1988).

The failure of a local school superintendent to file a written resignation with a school district board of education rendered its resolution to accepted his oral resignation inoperative. ***Petrella v. Siegel***, 537 N.Y.S.2d 124 (N.Y. 1988).

While a school board did not have unfettered power to fashion reasons for rejecting a personnel recommendation by the superintendent, it was not required to limit its consideration of a candidate to statutory reasons for dismissal or termination. ***Spurlin v. School Bd. of Sarasota County***, 520 So. 2d 294 (Fla. Dist. Ct. App. 1988).

Powers and duties

Public school officials have a duty to police the misconduct of their employees and to protect school children from sexual molestation by teachers. ***Doe v. Taylor Indep. Sch. Dist.***, 975 F.2d 137 (5th Cir. 1992).

A board of education exceeded its statutory authority when it entered into supplemental contracts with nonteaching employees. ***Hall v. Lakeview Sch. Dist. Bd. of Educ.***, 588 N.E.2d 785 (Ohio 1992).

A school superintendent's improper commingling of monies in an institute fund account did not convert it into a general educational fund or permit him to use the money therein for purposes other than those authorized by law. ***People v. Gornik***, 591 N.E.2d 39 (Ill. App. Ct. 1992).

A schools chancellor did not exceed his statutory authority when he issued a special circular mandating criteria and procedures to be followed by all community school boards in hiring community superintendents. ***Board of Educ. of the Community Sch. Dist. No. 29 of the Sch. Dist. of the City of New York v. Fernandez***, 588 N.Y.S.2d 869 (N.Y. App. Div. 1992).

A school employee's successful completion of a pretrial intervention program leading to the dismissal of her indictment was not a favorable termination of a criminal proceeding. Thus, she was not entitled to reimbursement of counsel fees under a state law requiring a board of education to reimburse an employee if a proceeding is dismissed or results in a final disposition in favor of the employee. ***Cressinger v. Board of Educ. of the City of Newark***, 606 A.2d 849 (N.J. Super. Ct. App. Div. 1992).

A district's decision to permit some employees to use its vehicle for personal purposes did not preclude its authority to discipline another employee for using one of its trucks without authorization. ***Howland v. Schuyler-Chemung-Tioga Bd. of Coop. Educ. Serv.***, 578 N.Y.S.2d 723 (N.Y. App. Div. 1992).

A state law requiring each individual, firm, partnership, association, or corporation doing business in the state to pay wages at specified times does not apply to school districts since a board of education is not a corporation within the meaning of the law. ***Groveport Madison Local Educ. Ass'n v. Groveport Madison Local Bd. of Educ.***, 594 N.E.2d 994 (Ohio Ct. App. 1991).

Neither a school board nor one of its custodians owed a duty to a parent who slipped on ice and while dropping her child off at school since as a licensee the school owed her no duty to remove ice or snow from the area. ***Hall v. Detroit Bd. of Educ.***, 465 N.W.2d 20 (Mich. Ct. App. 1990).

A school district did not act arbitrarily and capriciously in determining that the position of a teacher suffering from an extended illness was not open so as to require it to hire a teacher from an employment pool to fill the opening as a regular teacher. ***Flemmer v. Tammany Elementary Sch. Dist. No. 343***, 774 P.2d 914 (Idaho Ct. App. 1989).

A school district did not abuse its discretion in ordering physical education teachers who would be teaching swimming to take a course in cardiopulmonary resuscitation and water safety at the school's expense during school hours. ***Pleasant Valley Educ. Ass'n v. Pleasant Valley Community Sch. Dist.***, 449 N.W.2d 894 (Iowa Ct. App. 1989).

Compensation

Offsetting an assistant superintendent's unsubstantiated cash advances against his future salary payments while he was suspended with pay was not a suspension of his salary in violation of his contract; the district was merely recouping excess advances and the entire net of his salary was applied as reimbursement. ***Duffy v. Poughkeepsie City Sch. Dist.***, 583 N.Y.S.2d 658 (N.Y. App. Div. 1992).

The State Retirement Commission did not abuse its discretion in failing to accept an untimely deposi-

tion or to grant a second continuance to a school board employee who applied for regular and in the line of duty disability retirement benefits even though the result was the exclusion of evidence which may have resulted in a favorable resolution of her claim and was apparently cause by her attorney's failure to comply with procedural rules. ***Alsobrook v. State Div. of Retirement***, 600 So. 2d 1173 (Fla. Dist. Ct. App. 1992).

State law prohibited a school secretary who repeatedly refused to take a vacation from presenting the school district with a bill for her total vacation upon her retirement. ***Seymour v. Christiansen***, 1 Cal. Rptr. 2d 257 (Cal. Ct. App. 1991).

A state statute under which certified school district employees were classified on a salary schedule on the basis of a uniform allowance for years of training and experience required all such employees to be classified under a uniform scheme and did not allow a school district's grandfathering of existing salary entitlements. ***California Teachers Ass'n v. Governing Bd. of Lancaster Sch. Dist.***, 280 Cal. Rptr. 286 (Cal. Ct. App. 1991).

Where a superintendent and district finance manager and his subordinate issue paychecks and deal with financial accounts payable under teacher contracts, they do so as agents of the school board of trustees within the scope of their apparent authority. ***Bowman v. Lumberton Indep. Sch. Dist.***, 801 S.W.2d 883 (Tex. 1990).

A state law providing additional compensation for prior fiscal years did not require a board of education to make separate payments to noninstructional school employees in both of their capacities as school lunchroom administrators and secretaries. ***Sellers v. Lowndes***, 550 So. 2d 1021 (Ala. Ct. Civ. App. 1989).

A school board was entitled to credit against its liability for back pay to a wrongfully discharged employee for amounts she could have earned in mitigation of her damages if she had not resigned from a substantially similar position she accepted shortly after her discharge, but not for amounts earned at other employment or for unemployment compensation received during the period she was charged with mitigation as though she had worked at a replacement job. ***State ex rel. Martin v. Bexley City Sch. Dist. Bd. of Educ.***, 574 N.E.2d 1112 (Ohio Ct. App. 1989).

A custodian's being blinding by broom bristles striking his eye was a "traumatic event" within the meaning of the statute such that the state law governing accidental retirement benefits for public employees did not require him to file a claim for benefits before he reached age 65 as long as the injury took place before he became 65. ***Duignan v. Board of Trustees, Pub. Employees Retirement Sys.***, 538 A.2d 432 (N.J. Super. Ct. App. Div. 1988).

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Case Citations
SCHOOL DISTRICT LIABILITY

FIFTEENTH Series, Number 3

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Contractual Liability

Generally

Where a city board of education entered into a series of multiple one-year contracts, a suit over whether it had the authority to do so should not have been dismissed as moot when the contract was appro ed by the city because it presented a question that was capable of repetition yet evading review. ***Board of Educ. v. City of New Haven***, 602 A.2d 1018 (Conn. 1992).

A construction company should have been permitted to file a late notice of claim against a board of education where the evidence showed that it sought, in good faith, to complete its projects in accord with the board's instructions and litigation was initiated only as a last resort. ***Prote Contracting Co., Inc. v. Board of Educ.***, 583 N.Y.S.2d 261 (N.Y. App. Div. 1992).

Where a contractor sued for damages arising from the breach of an oral contract with a school, the school's counterclaim for damages based on construction delays was properly denied as they could not reasonably have been foreseen at the time the contract was entered into. ***Wasilewski v. Dalton Sch.***, 580 N.Y.S.2d 265 (N.Y. App. Div. 1992).

Where an asbestos contractor sued a board of education for monetary damages the board's counterclaim alleging negligent performance was not precluded simply because the architect's final certificate had been issued. ***Environmental Safety and Control Corp. v. Board of Educ.***, 580 N.Y.S.2d 595 (N.Y. App. Div. 1992).

A contract between a school district and a private company under which the latter would supervise the district's maintenance and custodial workers violated state law because the supervisory positions fell within classified service and the district's merit system. ***California Sch. Employees Ass'n v. Del Norte County Unified Sch. Dist.***, 4 Cal. Rptr.2d 35 (Cal. Ct. App. 1992).

The amount of money representing a 2.5% sales tax on services in effect at the time a construction contract for a school media center was awarded but which was repealed before the contract went into effect did not inure to the construction company as cost or profits. ***Pellicano Constr. Co. v. School Bd. of Jefferson County***, 582 So. 2d 1236 (Fla. Dist. Ct. App. 1991).

A contractor's failure to serve a timely notice of claim on a school board was a fatal defect as nothing in the record indicated that the individual who received notice had authority to accept it. ***Accen Constr. Corp. v. Port Washington Union Free Sch. Dist.***, 570 N.Y.S.2d 628 (N.Y. App. Div. 1991).

Where a contractor filed a notice of claim for arbitration against a school district eleven months after the invoice for the claimed contract balance was sent, it was properly precluded as untimely. ***In re City Sch. Dist. of Amsterdam and Tougher Indus.***, 570 N.Y.S.2d 388 (N.Y. App. Div. 1991).

A contract between a local board of education and the developer of a 12-minute current affairs program for use in schools was not contrary to state law and public policy where the program contained two minutes of commercial advertising since the use of such instructional materials was strictly within the province of local school boards. ***State v. Whittle Communications***, 402 S.E.2d 556 (N.C. 1991).

Estoppel precluded a State School Building Authority from refusing to pay for site preparation work and temporary heat provided by a contractor where the rules and regulations governing the filing periods for such a dispute were not clear. ***Commonwealth State Pub. Sch. Bldg. Auth. v. Noble C. Quandel Co.***, 585 A. 2d 1136 (Pa. Commw. Ct. 1991).

No contract was entered into for the sale of a former school site where a district stated that there would be no sale until a written contract was signed but the executed contract returned by the purchasers included changes the school board had not agreed to and it subsequently decided to end negotiations because the time period within which to enter a contract had expired. ***Feldman v. Miller***, 563 N.Y.S.2d 434 (N.Y. App. Div. 1990).

Where a contractor used materials suggested by the Office of School Buildings rather than those specified in the terms of the contract, it was entitled to payment despite a school district's determination that it wilfully and in bad faith violated their contract because at no time during the life of the contract or even during the time thereafter were any specific complaints or exceptions made by the board over the use of these materials. Thus, the board's determination was arbitrary, capricious, and unsupported by substantial evidence. ***Nu-Life Constr. Corp. v. Board of Review of the Bd. of Educ. of New York***, 556 N.Y.S.2d 360 (N.Y. App. Div. 1990).

A contractor was within its rights to pursue claims of its subcontractors against a school district under the terms of an agreement among them that any recovery would be turned over to the subcontractors. ***Raymer v. Foster & Cooper***, 393 S.E.2d 49 (Ga. Ct. App. 1990).

Where the absence of an integration clause in ontracts between a contractor and a school district d not preclude a finding that the contracts were tegrated because the bid forms supplied to the conactor contained a clause that was the functional quivalent of an integration clause, the contractor ould not introduce parole evidence to support its aim of detrimental reliance. ***Alaska Diversified Contractors, Inc. v. Lower Kuskokwim Sch. Dist.***, 778 .2d 581 (Alaska 1989), *cert. denied*, 493 U.S. 1022 990).

Construction Contracts, Bidders, and Suppliers

An unsuccessful bidder's failure to submit a mely filing of a notice of claim required the dismisal of its petition to review a board of education's etermination to award the contract to a competing idder. ***Kernan Library Office Group v. Board of Educ. of the City Sch. Dist. of Schnectady***, 589 N.Y.S.2d 953 (N.Y. App. Div. 1992).

A school board's disqualification of a low bidler for lacking the required plumbing license was not rbitrary where it gave the bidder ample opportunity o comply with the project manual relating to subcontracting and it failed to avail itself of the opporunity. ***Baron Constr. Co. v. Jefferson Parish Sch. Bd.***, 606 So. 2d 27 (La. Ct. App. 1992).

Estoppel precluded a school district from declaring a construction contract void as a result of he contractor's alleged failure to comply with bidding requirements where the district drafted the greement and received its benefits. ***East Peoria Community High Sch. Dist. No. 309 v. Grand Stage Lighting Co.***, 601 N.E.2d 972 (Ill. App. Ct. 1992).

Where a school board terminated a construction contract on the ground that the contractor's violation of local building codes was a breach, whether the alleged violation was a substantial and material breach was an issue of fact for the jury. ***Spotsylvania County Sch. Bd. v. Seaboard Sur. Co.***, 415 S.E.2d 120 (Va. 1992).

A suit by an unsuccessful bidder claiming animosity between it and representatives of the board of education was properly dismissed for failure to state a claim that the board acted fraudulently or collusively in awarding the bid to a rival where it alleged neither that the unnamed representatives had authority to speak for the board nor a factual connection between the animosity and the contract award. Also, the action was moot because the one year contract at issue had expired. ***Robinson Lighting Supply Co. v. Board of Educ. of Howard County***, 602 A.2d 195 (Md. Ct. Spec. App. 1992).

Where a school district entered into a lease agreement with a computer company for materials and equipment the company's breach of contract suit was successful because although there were three separate instruments surrounding the transaction, the lease was unambiguous and integrated. ***Business Credit Leasing v. City of Biddeford***, 770 F. Supp. 35 (D. Me. 1991).

The low bidder on a school construction project was denied declaratory judgment relief where it failed to demonstrate the arbitrariness of the school board's determination that its bid was nonresponsive even though such a concern was not raised by the board's staff prior to awarding the contract. ***Bud Mahas Constr. v. Clark County Sch. Dist.***, 767 F. Supp. 1045 (D. Nev. 1991).

The low bidder on a school project who lost the award because it failed to attend a required pre-bid meeting with school board representatives was properly denied an injunction where another bidder had already completed the job. ***Schaff Brothers Contractors v. Jefferson Parish Sch. Bd.***, 591 So. 2d 420 (La. Ct. App. 1991).

Where a school board adopted a prevailing wage rate for its construction contracts, it lacked the authority to do so; however, the contractors' association was required to show irreparable injury before it could be granted an injunction. ***Louisiana Associated Gen. Contractors, Inc. v. Calcasieu Parish Sch. Bd.***, 586 So. 2d 1354 (La. 1991).

A landscaper who brought suit against the Department of Education was precluded from recovery in quantum meruit for services rendered where there was evidence that the Department waived statutory contracting procedures. ***Smith v. Department of Educ.***, 751 F. Supp. 70 (D.V.I. 1990).

A board of education was neither arbitrary nor capricious in concluding that an asbestos contractor whose principal officer had been convicted of a felony for offering a gratuity to an inspector of the Federal Environmental Protection Administration in connection with a similar project was not a responsible bidder. ***Grgas Contracting Co. v. Mercklowitz***, 563 N.Y.S.2d 505 (N.Y. App. Div. 1990).

A school district was within its rights to specify the use of certain equipment on a renovation project and was neither arbitrary nor capricious in rejecting the low bidder's request for a hearing where the bidder failed to promise to use the specified equipment or its equivalent. ***In re K & M Turf Maintenance***, 560 N.Y.S.2d 673 (N.Y. App. Div. 1990).

Although a state law requiring that specifications for public works contain notice that specified mini-

mum wages and benefits would have to be paid to all workers on the project applied to school districts, a contractor had no right for a private cause of action against the district for failing to provide notice. ***Brian Hoxie's Painting Co. v. Cato-Meridian Cent. Sch. Dist.***, 557 N.Y.S.2d 280 (N.Y. 1990).

A school district acted within its discretion in requiring bidders to include a corporate resolution authorizing the formal submission of bids. Thus, the failure of the low bidder to comply with the requirement rendered its bid invalid. ***Stafford Constr. Co. v. Terrebonne Parish Sch. Bd.***, 560 So. 2d 558 (La. Ct. App. 1990).

Where a school district awarded a management services contract without seeking competitive bids, a group of general contractors unsuccessfully filed suit for declaratory judgment because the law requiring sealed bids on school construction projects did not apply to construction management services contracts. ***D-1 Constructors v. Unified Sch. Dist. No. 229***, 788 P.2d 289 (Kan. Ct. App. 1990).

A city board of education's minority set aside policy for construction contracts violated equal protection where there was no evidence that it was intended to benefit specifically those minority or women owned businesses that it believed were identified victims of its employees' denial of contracts on pretextual bases and the policy was insufficiently tailored to remedy past discrimination. ***Main Line Paving Co. v. Board of Educ.***, 725 F. Supp. 1349 (E.D. Pa. 1989).

A city acted within its discretion in rejecting the low bid on a school construction project where the bidder failed to comply with the minority and women business enterprise requirements. ***Peabody Constr. Co. v. City of Boston***, 546 N.E.2d 898 (Mass. App. Ct. 1989).

Where a school board refused to pay the remaining funds due on a contract for resurfacing high school running tracks because of problems resulting from the architect's improper design, it was entitled to damages equal to the amount necessary to bring the tracks up to minimum standards. ***D & O Contractors v. Terrebonne Parish Sch. Bd.***, 545 So. 2d 588 (La. Ct. App. 1989).

Equitable reformation was the appropriate remedy when, due to a clerical error, a contractor's bid on a public school construction project was more than three-quarters of a million dollars less than the contractor intended to submit where the firm acted in good faith and notified the district of the error prior to the district's acceptance of the bid. ***Iversen Constr. Corp. v. Palmyra-Macedon Cent. Sch. Dist.***, 539 N.Y.S.2d 858 (N.Y. Sup. Ct. 1989).

A school board's decision not to award a construction contract to the lowest bidder was within its discretion since it was neither obligated to grant the contract to the low bidder nor was it required to grant the low bidder a hearing. ***State ex rel. Page v. Reorganized Sch. Dist. R-VI of Christian County***, 765 S.W.2d 317 (Mo. Ct. App. 1989).

Construction Claims and Sureties

Subcontractors working on a school remodeling contract were third party beneficiaries entitled to the benefits of a school district's obligation under state law to require a general contractor to provide a payment bond. ***East Peoria Community High Sch. Dist. No. 309 v. Grand Stage Lighting Co.***, 601 N.E.2d 972 (Ill. App. Ct. 1992).

A materialman seeking payment in connection with a school construction project was entitled to bring a claim against the general contractor's surety company since the contractor and surety lacked authority to reduce the statutory period within which the materialman could act. ***Commercial Constr. Specialties v. ACM Constr. Management Corp.***, 405 S.E.2d 852 (Va. 1991).

Where custom-made windows were not installed on time and a school board obtained the windows from another supplier, the manufacturer could not file a claim against the bond because the windows were neither consumed nor used in the project. However, genuine issues of material fact over whether it supplied labor in connection with the project precluded summary judgment on its labor claim. ***Hope's Architectual Products v. Lundy's Constr.***, 762 F. Supp. 1430 (D. Kan. 1991).

A construction contractor's claim against a school district for lost profits resulting from the district's filing of excessive claims on its performance bond was in tort rather than a breach of contract. Thus, it was barred by sovereign immunity. ***Joske Corp. v. Kirkwood Sch. Dist. R-7***, 903 F.2d 1199 (8th Cir. 1990).

A supplier on a school renovation project did not relinquish its statutory rights to payment under a payment bond by entering into a new contract with the contractor in place of the preexisting agreement with the subcontractor. ***Trane Co., A Div. of Am. Standard v. Whitehurst-Lassen Constr. Co.***, 881 F.2d 996 (11th Cir. 1989).

Where evidence showed that a subcontractor's work on a school construction project was done at different times, the 45-day period for giving notice

to a contractor, with whom it was not in privity of its intent to look to the payment bond for protection, began from the day it started work on the particular project rather than when it began its earlier work. ***D.I.C. Commercial Constr. Corp. v. Knight Erection & Fabrication***, 547 So. 2d 977 (Fla. Dist. Ct. App. 1989).

Change Orders and Delays

Where the general contractor on a school project was responsible for delays the District of Columbia had no duty to mitigate damages. ***Edward M. Crough, Inc. v. Department of Gen. Servs.***, 572 A.2d 457 (D.C. 1990).

Because the change order procedures incorporated by reference into a contract between a board of education and contractor required prior approval, a change order price was not legally binding and enforceable until formal approval was received. ***Manshul Constr. Corp. v. Board of Educ. of New York***, 551 N.Y.S.2d 497 (N.Y. App. Div. 1990).

A contractor's claim against a school district for breach of contract seeking attorney fees and delay damages was an action in contract, not on tort. Thus, it was not barred by sovereign immunity. ***Industrial Constr. Management v. DeSoto Indep. Sch. Dist.***, 785 S.W.2d 160 (Tex. 1989).

Students

A school superintendent's alleged agreement to pay for a handicapped student's rehabilitation care at a private out of state facility had no binding effect on the board of education since it was beyond the scope of his authority. ***Lake Erie Institute of Rehabilitation v. Marion County Bd. of Educ.***, 798 F. Supp. 262 (W.D. Pa. 1992).

An agreement between an insurance cooperative and school district to provide personal injury and general liability coverage did not qualify as an insurance contract where it specifically excluded claims over which the district could assert its tort immunity. Thus, a suit by the parents of a student who was injured during track practice was properly dismissed by summary judgment. ***Waire v. Joseph***, 825 S.W.2d 594 (Ark. 1992).

An agreement between parents of fourth grade students who were abused by a teacher and a school district that a psychologist could interview the children in exchange for his turning notes of the interviews over to the parents was sufficient and nothing more formal was required even though the agreement was allegedly not preceded by formal negotiations. ***Parents Against Abuse in Sch. v. Williamsport Area Sch. Dist.***, 594 A.2d 796 (Pa. Commw. Ct. 1991).

There was no contract between a school district and parents of a student permitting him to complete an independent study prior to his being able to graduate where part of the agreement outlining deadlines was detached by the time the parents signed it because there was no mutual assent due to a disagreement over the existence of essential terms of the purported contract. Thus, the district properly withheld the student's diploma and denied him the opportunity to attend graduation exercises since he failed to submit proof that he had completed the independent study. ***Swany v. San Ramon Valley Unified Sch. Dist.***, 720 F. Supp. 764 (N.D. Cal. 1989).

Employees

A school district was not liable to a dismissed tenured teacher for a violation of his right to due process where after it denied his request for a continuance at his dismissal hearing both he and his counsel left the hearing room and when the hearing continued the school board continued with the case and ordered the termination of his employment with cause. ***Moore v. Board of Educ. of Fulton Pub. Sch. No. 58***, 836 S.W.2d 943 (Mo. 1992).

Since contracts of public bodies, including boards of education, are made with reference to existing statutes which enter into contracts by operation of law, a determination of a teacher's employment status could consider evidence other than a board's official minutes. ***Board of Educ. of Perry County v. Jones***, 823 S.W.2d 457 (Ky. 1992).

Where a school district declined to renew the coaching contracts of a teacher to coach track and basketball after he had been terminated as football coach due to disparaging racial remarks he made, he had no continuing property interest in the track and basketball contracts since they automatically expired upon the completion of his assigned duties and neither sport was in season. ***Holthaus v. Cincinnati Bd. of Educ.***, 602 N.W.2d 360 (Ohio Ct. App. 1991).

A school district was not liable for breach of contract where an individual could not establish the existence of a contractual relationship between himself and the district as there was no evidence of a written contract. ***DeMarr v. Kansas City Sch. Dist.***, 802 S.W.2d 537 (Mo. Ct. App 1991).

Although a school principal lacked the authority to bind a school board to a contract, the board abused

its discretion when it arbitrarily or capriciously awarded supplemental limited contracts to some teacher who performed additional duties but not to others. ***Wolf v. Cuyahoga Falls City Sch. Dist. Bd. of Educ.***, 556 N.E.2d 511 (Ohio 1990).

Miscellaneous

A multi-year lease agreement entered into by a board of education for copier services was not void but voidable if it were shown that the school system did not have sufficient funds to pay the balance due. Also, since the system's financial condition was an issue of fact for the jury, summary judgment was precluded. ***Mercantile Bank of Illinois v. School Dist. of Osceola***, 834 S.W.2d 737 (Mo. 1992).

Where a school board showed the necessity of hiring special counsel to help it to prevail in its action against a taxpayer, it was proper to require the taxpayer to pay the attorney's fees. ***Cortina v. Gulf States Utilities-Cajun Elec. Power Coop.***, 594 So. 2d 1326 (La. Ct. App. 1991).

Since the construction of a school building by school district is sovereign activity and a district's suit against an architect arising out the project was to vindicate public rights, the statute of limitations did not apply. ***Laramie County Sch. Dist. No. 1 v. Muir***, 808 P.2d 797 (Wyo. 1991).

A school district was not liable to individuals who, anticipating the sale of real property to the district, expended substantial sums of money improving it because the district was protected by government immunity, the property had not been taken under eminent domain, and estoppel does not apply to school districts. ***Dillard v. Austin Indep. Sch. Dist.***, 806 S.W.2d 589 (Tex. Ct. App. 1991).

A school board prevailed in its negligence action against its architects when the roof of a school building the firm designed began to leak. However, its breach of contract claim failed as it did not present expert testimony regarding the standard of care required of the architects and the allegedly improper inspections they conducted. ***Watson, Watson, Rutland Architects v. Montgomery County Bd. of Educ.***, 559 So. 2d 168 (Ala. 1990).

A school corporation did not breach its contract for the sale of a school building where the buyer had been put on notice about the presence of asbestos-containing materials in the building before the sale occurred. ***Elkhart Community Sch. Corp. v. Mills***, 546 N.E.2d 854 (Ind. Ct. App. 1989).

A state law prohibiting a school district from entering into a contract without attaching a certificate that it had sufficient revenues to pay for the project did not apply to a contract to be paid out of proceeds from a bond issue combined with funds from a state program. ***Tri-County North Local Sch. Bd. of Educ. v. McGuire & Shook Corp.***, 748 F. Supp. 541 (S.D. Ohio 1989).

Statutory Liability

A high school student who was suspended from school as the result of a search of his vehicle on school property should have been permitted to maintain his section 1983 action as such claims had previously been permitted against other state agencies. ***Howlett v. Rose***, 110 S. Ct. 2430 (1990).

A state law restricting corporal punishment does not impose civil liability on a school for its failure to take affirmative action to avoid such punishment; in order for a school to be liable for damages for a breach of a mandatory duty imposed under law, there must be an obligatory duty to take specified action to prevent foreseeable injuries. ***Clausing v. San Francisco Unified Sch. Dist.***, 271 Cal. Rptr. 72 (Cal. Ct. App. 1990).

Sovereign immunity protected a board of education from liability over union members' claims for monetary damages arising from a violation of state law by refusing to collect union dues through payroll deductions and for alleged violations of the union members state constitutional rights. ***Clevinger v. Board of Educ. of Pike County***, 789 S.W.2d 5 (Ky. 1990).

State law created an implied right of action in favor of a former adult education student who was allegedly unable to complete the program because of misappropriation of funds by school districts. Also, while the student did not have a property interest sufficient to raise a due process issue, her claim was adequate to present an equal protection issue. ***Mercado v. Kingsley Area Sch./Traverse City Pub. Sch. Adult Educ. Consortium***, 727 F. Supp. 335 (W.D. Mich. 1989).

Tort Liability

Employees

A school district was not liable to a terminated substitute teacher on charges of libel based on its circu-

lation of a memo about him within the school since under state law, with the exception of torts involving motor vehicles, a school district has sovereign immunity. ***Jones v. Houston Indep. Sch. Dist.***, 979 F.2d 1004 (5th Cir. 1992).

A teacher's claim for intentional infliction of emotional distress against a school board alleging that district personnel conspired to harass her and intimidate her into resigning after she was assaulted by a student was barred as it did not fit within any category of waivers of governmental immunity. ***Purdy v. Romeo***, 613 A.2d 91 (Pa. Commw. Ct. 1992).

Where an employee who worked for a school system on two separate campuses left the first, went to lunch, and was driving to the other after lunch was involved in an auto accident in which the driver of the other vehicle was killed, the district was entitled to a grant of summary judgment in the wrongful death action by the decedent's survivors since the employee was not engaged in her job while driving from her lunch break to the second campus. ***Tryer v. Ojai Valley Sch.***, 12 Cal. Rptr.2d 114 (Cal. Ct. App. 1992).

Where a school district sent a letter of nonrenewal to a teacher informing her that she would not be retained, an award of $150,000 for lost wages, impairment of future earning capacity, and emotional distress was not excessive. ***Lee v. Giangreco***, 490 N.W.2d 814 (Iowa 1992).

The suit of a teacher on medical leave sued the school district alleging various state law tort claims was properly dismissed since a district exercising governmental functions is immune from suits predicated on the torts of its employees absent a claim based on specified statutory exceptions. ***Brown v. Houston Indep. Sch. Dist.***, 763 F. Supp. 905 (S.D. Tex. 1991).

Students

Where an 11 year old student choked to death after being caught on a bandanna in a cloakroom at school, state compulsory attendant laws did not create a duty to protect students while they are in school. ***Maldonado v. Josey***, 975 F.2d 727 (10th Cir. 1992).

A wrestling coach did not violate a high school student's constitutional rights by sending him back into a match after he was injured because the coach did not cause the injury; also, state tort law provided a remedy at law for the injuries. ***Fenstermaker v. Nesfedder***, 802 F. Supp. 1258 (E.D. Pa. 1992).

State compulsory attendance laws do not impose a duty on a school district to protect a student from an assault by another student at school. ***Russell v. Fannin County Sch. Dist.***, 784 F. Supp. 1576 (N.D. Ga. 1992).

Where a student on a band trip returned to an empty bus and struck her head on the door-frame while attempting to close the emergency door, her injury did not arise out of the district's operation of the bus. Thus, governmental immunity precluded her action. ***LeLeaux v. Hamshire-Fannett Indep. Sch. Dist.***, 835 S.W.2d 49 (Tex. 1992).

A chemistry teacher and school nurse were not liable to a student who was burned by a caustic substance during a science experiment where state law provides no personal liability for professional school district employees unless they are involved in the discipline of students. ***Duross v. Freeman***, 831 S.W.2d 354 (Tex. Ct. App. 1992).

A school system was vicariously liable for injuries sustained by a student who was injured in a chemical explosion while participating in a summer program conducted by an instructor who had been hired as an independent contractor; although schools are generally not liable for the acts of independent contractors, an exception exists for situations involving inherently dangerous activities. ***District of Columbia v. Howell***, 607 A.2d 501 (D.C. 1992).

A school board's duty to maintain a reasonably safe condition extended to a student who was shot as he drove out of a school's parking lot since the duty did not end merely because the student was injured a few feet from the school's property line. ***Gutierrez v. Dade County Sch. Bd.***, 604 So. 2d 852 (Fla. Dist. Ct. App. 1992).

Where a seven-year-old child died of a stroke after receiving a Diphtheria-Tetanus-Pertussis inoculation pursuant to a state law which required all students to obtain these shots in order to attend school, a school district and the manufacturer of the serum were not liable as the evidence failed to establish a causal connection between the shot and the child's death. ***Toon v. Lederle Lab., A Div. of Am. Cyanamid Corp.***, 603 So. 2d 245 (La. Ct. App. 1992).

A school district was liable for injuries sustained by a student who was hurt when she fell while walking on a gym floor that was being mopped because in light of the student's age, intelligence, and experience, it created a hazardous condition. ***Jolivette v. Iberia Parish Sch. Bd.***, 601 So. 2d 812 (La. Ct. App. 1992).

A school district was not liable to a high school student was injured when he was hit by another student who had a prior disciplinary record involving a physical altercation even thought the school knew

that the assaultive student had been involved in a previous fight because it neither acted unreasonably under the circumstances nor breached its duty to the injured student. ***Coleman v. Joyner***, 593 So. 2d 451 (La. Ct. App. 1992).

A school board was vicariously liable for injuries suffered by a high school football player when the coach and trainer breached their duty to refer him for appropriate medical care after he suffered a wrist injury during a game. ***Jarreau v. Orleans Parish Sch. Bd.***, 600 So. 2d 1389 (La. Ct. App. 1992).

A school could not be held liable for an injury sustained by a student who was tripped in the hallway by another student where the injury was caused by a spontaneous and unanticipated act. ***Ceglia v. Portledge Sch.***, 590 N.Y.S.2d 228 (N.Y. App. Div. 1992).

A student who was injured on school property was properly granted leave to file a late notice of claim because when he was observed by a school aide and was cared for by the school nurse, the district had actual notice of the accident on the day it occurred. ***Zimmett v. Huntington Union Free Sch. Dist.***, 589 N.Y.S.2d 546 (N.Y. App. Div. 1992).

A college student who was struck and injured by a baseball while home for a visit was granted leave to file a late notice of claim where the full extent of his injury was not known until the swelling in his eye subsided even though this took place after the statutory date for filing the notice had expired; the school district was not prejudiced by late notice because the baseball coach saw the student immediately after he was injured and it had actual notice of the injury at that time. ***Esposito v. Carmel Cent. Sch. Dist.***, 589 N.Y.S.2d 703 (N.Y. App. Div. 1992).

A school district was not liable to an experienced high school athlete who was injured while voluntarily participating in extracurricular sports where it provided reasonable care to protect him from injury; he assumed the risks of injury. ***Kennedy v. Rockville Centre Union Free Sch. Dist.***, 587 N.Y.S.2d 442 (N.Y. App. Div. 1992).

Where a tornado knocked down a school wall killing or injuring thirty students, a county and others were entitled to immunity because even though a tornado watch had been issued earlier in the day, notification of the school was a discretionary act. ***Litchhult v. Reiss***, 583 N.Y.S.2d 671 (N.Y. App. Div. 1992).

A school district was not liable when a sixth grade student was injured because another student pulled a chair out from under him as he began to sit down as it could not have anticipated or prevented the accident. ***Tomlinson v. Board of Educ. of the City of Elmira***, 583 N.Y.S.2d 664 (N.Y. App. Div. 1992).

Where a 17-year-old high school student tripped and fell while playing basketball on an outdoor court adjacent to a school, the presence of clearly visible trenches about an inch deep and four inches wide precluded recovery based on wilful and wanton negligence since he knew or should have known that these could have caused injury. ***Oropeza v. Board of Educ. of Chicago***, 606 N.E.2d 482 (Ill. App. Ct. 1992).

The father of a seven-year-old student who was killed while crossing an intersection near her school was denied recovery for failure to allege sufficient facts upon which the school district could be held liable for wilful and wanton misconduct; also, because the accident took place five minutes after the start of classes and ten minutes after students were expected to be in the school, the district could not be liable as it had no duty to have a crossing guard outside once the school day was underway. ***Gilmore v. City of Zion***, 605 N.E.2d 110 (Ill. App. Ct. 1992).

Where a student who was struck in the eye by a nail thrown by a classmate successfully filed suit against the tort feasor, his action against the city and school board of trustees as assignees of the other student's right of contribution was precluded; by not filing a notice of claim at the outset, he could not circumvent the requirements of the State Torts Claim Act by claiming to be an assignee of the wrongdoer's right of contribution. ***Berube v. City of Northampton***, 602 N.E.2d 560 (Mass. 1992).

Where a fourth grade student who brought golf clubs home from school and struck and injured his three-year-old brother while practicing his swing, a school district was not liable since golf clubs are not unreasonably dangerous instruments and there was no need for it to provide supervision outside of the school setting. ***Brewster v. Rankins***, 600 N.E.2d 154 (Ind. Ct. App. 1992).

A school district was not liable when an 11-year-old fell from a jungle gym after school hours since the risk of injury was obvious and there were neither any latent defects in the equipment nor any otherwise dangerous conditions present. ***Cozzi v. North Palos Elementary Sch. Dist.***, 597 N.E.2d 683 (Ill. App. Ct. 1992).

School administrators were immune from liability for negligent supervision and programming under the state Tort Claims Act when a special needs student was injured while attempting to run away from another student because their actions were discretionary. ***Bencic v. City of Malden***, 587 N.E.2d 795 (Mass. App. Ct. 1992).

A school district was immune from liability for injuries suffered by a six-year-old student who was seriously injured when struck by a train while walking home from school because it had no duty to protect him on his way home from school. ***Honeycutt v. City of Wichita***, 836 P.2d 1128 (Kan. 1992).

A school district and one of its teachers were not entitled to statutory immunity where a student was injured when struck by a shot-put thrown by the teacher. ***Hedges v. Swan Lake and Salmon Prairie Sch. Dist. No. 73***, 832 P.2d 775 (Mont. 1992).

A school district was not liable for injuries sustained by a student who was struck by an automobile in an intersection near the school he attended while riding home on his bicycle since its obligation to patrol or supervise intersections near a school is discretionary. ***Fielding v. Heiderick***, 832 P.2d 1244 (Or. Ct. App. 1992).

School officials were entitled to statutory immunity from charges that their security system was inadequate after a student who was injured by another student with a knife brought suit; however, a jury instruction that they were immune from negligence for failing to supervise students in the day to day course of school events was reversible error. ***Mosley v. Portland Sch. Dist. No. 1J***, 813 P.2d 71 (Or. Ct. App. 1992).

A high school which had an open campus policy allowing students to leave school property during the school day was not liable for the death of a student who left campus with friends and later killed in an automobile accident because the school board's decision to approve such a policy was a discretionary act. Thus, it was protected under the doctrine of discretionary immunity. ***Heigl v. Board of Educ. of New Canaan***, 587 A.2d 423 (Conn. 1991).

A school district was not entitled to discretionary immunity under the state Torts Claims Act for injuries sustained by a mentally retarded six year old student as a result of its alleged negligent retention of the school bus driver who sexually molested her given evidence of its failure to follow mandatory reporting procedures that might have alerted the student's mother to the driver's actions. ***Kansas State Bank & Trust Co. v. Specialized Transp. Serv.***, 819 P.2d 587 (Kan. 1991).

Where there was no evidence that school personnel acted negligently, a school district was not liable to the parents of a kindergarten student was sexually assaulted at school; also, the relationship between the student, her parents, and school system did not create an implied contract obligating the school to provide students with a safe school setting. ***W.L.O. v. Smith***, 585 So. 2d 22 (Ala. 1991).

A school district, superintendent, and principal could not be liable under *respondeat superior* for a teacher's alleged overuse of physical force against a student where they neither directly participated in the alleged incident and nor promulgated the policy that was the "moving force" of the alleged violation. ***Thrasher v. General Casualty Co. of Wis.***, 732 F. Supp. 966 (W.D. Wis. 1990).

The purchasing of insurance policies by a principal and school district did not operate to waive their right to claim immunity in an action where an elementary school student was injured when he was hit by a truck while walking to a bus stop. ***Beatty v. Charlotte-Mecklenburg Bd. of Educ.***, 394 S.E.2d 242 (N.C. Ct. App 1990); *aff'd* 406 S.E.2d 579 (N.C. 1990) (per curiam).

A school district was not liable for injuries incurred by a student who participated in a work-study program at a county board of cooperative educational services where at the time of his injury he passed from its custody and control to that of the board, the district was unaware of the nature of his employment, and there was no allegation that it was negligent in allowing him to participate in the program. ***Kennedy v. Waterville Cent. Sch. Dist.***, 555 N.Y.S.2d 224 (N.Y. App. Div. 1990).

Where students were required to obtain a form showing proof of medical insurance before they were allowed to participate in sports and a student who was injured during football practice had not submitted a proof of coverage form, the school was not liable as its general duty to provide supervision did not extend to requiring proof of medical insurance. ***Limerick v. Euclid Bd. of Educ.***, 591 N.E.2d 1299 (Ohio Ct. App. 1990).

A student who was injured when he was struck by a discuss during a warm-up period supervised by a school volunteer was owed no duty of care by the volunteer; however, the school district was liable as owed him a duty to supervise the warm-up sessions adequately. ***Poelker v. Macon Community Unit Sch. Dist. No. 5***, 571 N.E.2d 479 (Ill. App. Ct. 1990).

A school district was not liable to a high school student was injured in a sledding accident during recess where there was neither any evidence that the school breached its duty to supervise nor that poor supervision was the proximate cause of the student's injuries. ***Gattyan v. Scarsdale Union Free Sch. Dist. #1***, 543 N.Y.S.2d 732 (N.Y. App. Div. 1989).

A school district was liable for injuries sustained by a student who fell from a jungle gym on the playground during a school recess because the school failed to provide adequate supervision on the

playground, did not provide a safe place for the students to play at recess, and negligently located the jungle gym on a hard surface. ***Jastram v. Lake Villa Sch. Dist. 41***, 549 N.E.2d 9 (Ill. App. Ct. 1989).

Where a student was injured while participating in a physical education class, an allegation that the school district failed to adequately oversee various aspects of class related to tasks which were supervisory in nature and so were insufficient to allege its liability for negligence; however, charges that the board of education knowingly and intentionally, or with reckless disregard, provided inadequate supervision, unsafe and inadequate matting under a rope ladder climbed by students, and inadequate equipment and instruction stated a cause of action against the school for wilful and wanton misconduct. ***Bowers v. Du Page County Regional Bd. of Sch. Trustees Dist. No. 4***, 539 N.E.2d 246 (Ill. App. Ct. 1989).

Miscellaneous

The mother of a high school athlete who was struck in the face by a shot thrown by a student practicing for the shot-put event as she walked through the practice area could not recover from a school district because it was entitled to immunity under the state's recreational user statute. ***Rankey v. Arlington Bd. of Educ.***, 603 N.E.2d 1151 (Ohio Ct. App. 1992).

Damage to a school building resulting from the alleged release of asbestos was damage to property giving rise to a tort claim in strict liability or negligence against the manufacturer even though the building's structure was unharmed. ***Hebron Pub. Sch. Dist. No. 13 of Morton County v. United States Gypsum***, 690 F. Supp. 866 (D.N.D. 1988).

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Case Citations
LOCAL SCHOOL BOARD

FIFTEENTH Series, Number 4

Prepared by Joseph R. McKinney, Assistant Professor
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School Board Elections

Generally

Where the winning candidate in a school board election was ineligible to hold office because his home was not physically located in the school district he was elected to serve, it was proper to declare the position vacant rather than name the candidate with the next highest number of votes the winner. ***Davis v. Holt***, 804 S.W.2d 362 (Ark. 1991).

A prospective school board member who did not live in the area when he filed his qualifying papers but who expressed his intention to become a *bona fide* resident of the area and had done so by the time of the election was a resident of the proper residence area; state law did not require proper residency when the initial qualifying papers were filed. ***Butterworth v. Espey***, 565 So. 2d 398 (Fla. Dist. Ct. App. 1990).

A state law providing for a nonpartisan school board election for one county was invalid due to a constitutional prohibition, with some exceptions, against special laws relating to elections, jurisdiction, or duties of officers, including school board members; the unconstitutionality of the law notwithstanding, the acts of school board members elected in nonpartisan elections continued to be valid and binding until new members were duly appointed. ***Kane v. Robbins***, 556 So. 2d 1381 (Fla. 1989).

An unsuccessful candidate for reelection to a school board who was not, as required by state law, properly designated as one of four incumbents successfully brought suit to compel a new election where the three candidates who were listed as incumbents won reelection; even though the failure to designate him as an incumbent was an unintentional clerical error, it was possible that it influenced the outcome of the election. ***Rizzo v. Board of Election Comm'rs of Revere***, 525 N.E.2d 409 (Mass. 1988).

Voters unsuccessfully challenged the validity of twenty-six irregular absentee ballots in a school building projects election where the absentee voters substantially complied with statutory balloting procedures and the election judges made special efforts in handling the questionable ballots to preserve the integrity of the election. ***In re the Contest of Sch. Dist. Election***, 431 N.W.2d 911 (Minn. Ct. App. 1988).

An individual was ineligible to run for school board in a district in which she was not a *bona fide* resident since where a candidate chooses to send her child to school is irrelevant to the issue of residency. ***Cummings v. Washington County Election Comm'n***, 724 S.W.2d 486 (Ark. 1987).

A petition by voters filed with a board of education asking that a proposition to increase the number of school board members be submitted to the electorate in a general election was valid as state law allows voters to decide whether to add members to a school board. ***Trotter v. Education Officers Electoral Bd. of Canton Union Sch. Dist. No. 66***, 512 N.E.2d 115 (Ill. App. Ct. 1987).

A state law which disqualified elected school board members from being employed by the same school district did not prohibit a teacher from seeking elective office on the board because he submitted an irrevocable letter of resignation, effective only in the event of his election. ***La Bosco v. Dunn***, 502 N.Y.S.2d 200 (N.Y. App. Div. 1986).

In order to stand for election to an intermediate unit board of directors, a director from a local school district had to first be nominated by a majority vote of the board of directors of the member district. ***Hazelton Area Sch. Dist. v. Luzerne Intermediate Unit***, 510 A.2d 1282 (Pa. Commw. Ct. 1986).

An agreement between two merging school districts calling for the appointment of members to complete any temporary vacancies on the new school board did not conflict with a general state law providing for the election of board members in the event of vacancies. ***Appeal of Muhlenberg County Bd. of Educ.***, 714 S.W.2d 168 (Ky. Ct. App. 1986).

Recall Elections

A recall petition charging school board members with sexual discrimination by hiring a female rather than a male as an elementary school principal was insufficient and therefore void because it did not set forth sufficient facts or otherwise specify why the challenged acts constituted misfeasance, malfeasance, or a violation of the oath of office. ***In re the Recall of Wade***, 799 P.2d 1179 (Wash. 1990).

Voters in a school board election unsuccessfully sought to set aside election results based on their claim that the winning candidate engaged in prohibited political "partisanship" where her use of political party endorsements was not prohibited by law; also, linking her name with those of candidates for the Democratic Party did not place her on a "slate" of a political party in violation of the law requiring the election to be conducted on a non-partisan basis. ***Hawkins v. Butler-Truesdale***, 584 A.2d 1241 (D.C. 1990).

A school district was not responsible for pre-election costs incurred by a country in its unsuccessful effort to require a recall election of district trustees since state law imposing costs for school board elections referred only to ones that were actually held and said nothing about costs preparing for an election. ***County of Fresno v. Clovis Unified Sch. Dist.***, 251 Cal. Rptr. 170 (Cal. Ct. App. 1988).

Taxpayers unsuccessfully petitioned to remove school board members who rescinded a building renovation contract with the lowest bidder and selected the second lowest original bidder to complete the work rather than submit the job to rebidding because the petition failed to state a cause of action as a matter of law; the board was not required to submit work for rebidding if it was satisfied with the next lowest original bidder. ***Nernberg v. Adams***, 544 A.2d 92 (Pa. Commw. Ct. 1988).

A school board member who was the subject of a recall petition but was not a party to the proceeding to compel certification of a recall petition or to compel a recall election had a right to intervene and to reurge any exceptions and or defenses he deemed appropriate. ***Becnel v. Madere***, 535 So. 2d 387 (La. Ct. App. 1988).

Allegations in school board recall petitions must be stated in specific enough terms to allow board members an opportunity to prepare a statement in justification of their conduct in office. Thus, general allegations that board members violated state open meeting laws were insufficient to constitute valid grounds for recall. ***Unger v. Horn***, 732 P.2d 1275 (Kan. 1987)

The judiciary lacks authority to set aside the results of a school board election where state law vested exclusive authority to deal with elections of board members in the Commissioner of Education. ***Summerville v. Roosevelt Union Free Sch. Dist.***, 513 N.Y.S.2d 252 (N.Y. App. Div. 1987).

Voting Rights Act

A federal district court's failure to make findings about special circumstances explaining past proportional African-American representation in a suit under the Voting Rights Act challenging a new at-large school-board election system required the action to remanded until an adequate record was available. ***Harvell v. Ladd***, 958 F.2d 226 (8th Cir. 1992).

The decision of a city and its school board to delay redistricting for three years after the most recent census to assure accurate and final census data was a rational state policy given the city's status as a party in pending census litigation. ***Cardona v Oakland Unified Sch. Dist., Cal.***, 785 F. Supp. 837 (N.D. Cal. 1992).

Where a plaintiff who brought suit under 42 U.S.C. Section 1983 challenging the at-large election of school board members did not allege racial discrimination or any intentional interference with his right to vote other than the maintenance of an at-large voting system, such a system, by itself, did not violate federal law, even where candidates from one community had difficulty defeating candidates from another community in the same district. ***Turner v. Dierks Sch. Dist.***, 782 F. Supp. 81 (W.D. Ark. 1992).

African-American voters unsuccessfully brought suit under the federal Voting Rights Act challenging an at-large election system for school board members; to be successful on such a claim a party must prove that a large and compact minority group exists, that the group is politically cohesive, and that absent special circumstances the white majority typically votes as a bloc to defeat minority candidates. ***Solomon v. Liberty County, Fla.***, 899 F.2d 1012 (11th Cir. 1990), *cert. denied* ,111 S. Ct. 670. (1991). *See also*, ***Jenkins v. Red Clay Consol. Sch. Dist. Bd. of Educ.***, 780 F. Supp. 221 (D. Del. 1991); ***Brewer v. Ham***, 876 F.2d 448 (5th Cir. 1989).

A school board's voting arrangement which provided that one of its single member districts was temporarily represented by two persons, each with one half of a vote, as a result of a settlement agreement arising out of a Voting Rights Act suit complied with the one person-one-vote requirement of the due process clause of the Fourteenth Amendment. ***Weinrib v. Montgomery Co. Bd. of Educ.***, 743 F. Supp. 808 (M.D. Ala. 1990).

A settlement proposal to correct a population imbalance in a school district calling for a phased-in rather than an immediate implementation plan for the reapportionment election of school board directors was constitutional and did not violate the "one person, one vote" principle where immediate implementation would have been unfair to the incumbents and would have created chaos. ***Resident Electors of Pennsbury Sch. Bd. v. Pennsbury Sch. Bd.***, 572 A.2d 1303 (Pa. Commw. Ct. 1990).

A state's appointive system for selecting school board members was neither unconstitutional nor in violation of the Voting Rights Act because even though it was initially adopted for discriminatory purposes, the plaintiffs were unable to prove that racial discrimination motivated its continued use. Also, they were unable to establish a disparity between the percentage of African-Americans in the population and the racial make-up of the school boards, or, where

a disparity was found to exist, they failed to show that it was caused by the appointive system. ***Irby v. Virginia State Bd. of Elections***, 889 F.2d 1352 (4th Cir. 1989), *cert. denied*, 110 S. Ct 2589 (1990).

A state law prohibiting certain municipal employees, political party office holders, and elected officials from serving on community school boards did not violate the section of the Voting Rights Act which prohibited the establishment of voting qualifications resulting in the denial or abridgement of an individual's right to vote based on race or color where there was no evidence to support such a claim. ***Fletcher v. Marino***, 882 F.2d 605 (2d Cir. 1989).

African American and Hispanic residents successfully challenged a redistricting plan under a state law which authorized redistricting only under a plan that allocated no fewer than 70% of school board members to election from single member districts. Thus, a board's attempt to redistrict into three or four single member districts was contrary to state legislative policy. ***League of Latin Am. Citizens v. Midland Indep. Sch. Dist.***, 829 F.2d 546 (5th Cir. 1987).

Where Native Americans were successful in alleging that a federal district court failed to make necessary and detailed findings of fact in a voting rights case over whether a school district's at-large system for electing board members unlawfully diluted their voting strength in violation of the Voting Rights Act, the case was remanded. ***Buckanaga v. Sisseleton Indep. Sch. Dist., No. 54-5, South Dakota***, 804 F.2d 469 (8th Cir. 1986).

Native Americans successfully challenged an at-large system of voting for school board members where evidence corroborated the testimony of expert witnesses of racially motivated voting in at-large elections and demonstrated that a lack of educational opportunities for Native Americans created an obstacle to their full participation in the electoral process. Thus, the totality of the circumstances indicated that the at-large system had the effect of diluting Native American votes in violation of the Voting Rights Act. ***Windy Boy v. County of Big Horn***, 647 F. Supp. 1002 (D. Mont. 1986).

Where African Americans established the existence of substantial evidence of both racial bloc voting sufficient to overcome their bloc voting in an effort to elect minority candidates to the school board and a long history of pervasive racial discrimination, the Voting Rights Act was violated. ***Jackson v. Edgefield County, S.C. Sch. Dist.***, 650 F. Supp. 1176 (D.S.C. 1986).

A challenge by minority voters to a new districting plan for the election of school board members pursuant to the Voting Rights Act under which two minority districts were created failed where they were unable to demonstrate a practical alternative that would significantly increase the "effectiveness" of minority voters and the redistricting plan did not deny minorities equal access to the electoral process. ***Latino Political Action Comm. v. City of Boston***, 784. F.2d 409 (1st Cir. 1986).

School Board Members

Conflict of Interest

A school board member who sold doughnuts to a school district under various business arrangements violated state conflict of interest laws relating to public officials and employees where a school district was a municipal agency within the meaning of the law and the board member was a municipal employee pursuant to the law. ***McMann v State Ethics Comm'n***, 590 N.E.2d 693 (Mass. App. Ct. 1992).

A school board member was required to make restitution of his wife's teaching salary where he had notice of the conflict of interest after the board's attorney notified him of the violation by pointing out a state supreme court decision on point. ***Waller v. Moore, ex rel. Quitman County Sch. Dist.***, 604 So. 2d 265 (Miss. 1992)

A school board member violated a constitutionally created conflict of interest provision and a state public servant conflict of interest statute when her husband was employed as a teacher during her tenure on the board even though she did not vote on her husband's contract. ***Towner v Moore ex rel. Quitman County Sch. Dist.***, 604 So. 2d 1093 (Miss. 1992).

Where state law prohibited school boards from entering into contracts with spouses of board members, the members were not required to make restitution for the salaries of their spouses as there were no allegations that the board did not receive value for services rendered nor was there any evidence of bad faith by the board members. ***Smith v. Dorsey***, 530 So. 2d 5 (Miss. 1988).

Liability

A teacher who employment was terminated for immoral conduct unsuccessfully brought suit against board members and others charging that allegedly derogatory comments made by board members after his termination violated his constitutionally protected liberty interest in his "good name" where he had

been afforded due process with respect to his dismissal; also, since the alleged remarks took place after the teacher was fired, he faced no threat of lost government employment. ***Vukadinovich v. Board of Sch. Trustees of Michigan City Area Sch.***, 978 F.2d 403 (7th Cir. 1992).

An agent representing an aggrieved bidder on a school district's health insurance contract unsuccessfully brought suit against school board members where there was no showing of bad faith by the board in awarding the contract even though the company awarded the account was later determined to be lacking the authority to bid; absent a showing of fraud, personal profit, or bad faith, board members are not subject to personal liability for payments made under an illegal contract. ***Hoefer v. Wisconsin Educ. Ass'n Ins. Trust***, 470 N.W.2d 336 (Iowa 1991).

Newly elected school board members were not personally liable for an alleged breach of a school secretary's contract or an implied covenant since they had not been parties to her contract when they refused to recognize her claim for pay for accumulated vacation time, for a delay in providing information to the state retirement system, and for refusing to properly reimburse her for expenditures of private funds on public matters. ***Seymour v. Christiansen***, 1 Cal. Rptr.2d 257 (Cal. Ct. App. 1991).

School board members could only be fined and or removed from office for violations of the state open meeting law if their actions were intentional, not willful and deliberate. ***Willison v. Pine Point Experimental Sch.***, 464 N.W.2d 742 (Minn. Ct. App. 1991).

An unsupported allegation that a school district could have borrowed money at a rate less than it did was insufficient to have school board members surcharged as they had not committed a misconception of law. ***Conners v. West Greene Sch. Dist.***, 569 A.2d 978, (Pa. Commw. Ct. 1989).

School board members were not individually liable for not rehiring a teacher after she resigned pursuant to a settlement agreement as the board did not participate in reaching the settlement and none of the members promised to reemploy her; it only formally approved the settlement and was not bound by any alleged promise made by the superintendent absent evidence it ratified such a promise. ***Branch v. Greene County Bd. of Educ.***, 533 So. 2d 248 (Ala. Civ. App. 1988).

Where a special circular requiring all vacancies at a school board to be filled promptly and that authority to continue interim acting assignments in vacancies terminated in five months was mandatory rather than directory, the board's failure to act within the five month period did not automatically confer permanent status upon an interim acting official. ***Purvis v. Board of Educ. of City Sch. Dist. of New York***, 512 N.Y.S.2d 874 (N.Y. App. Div. 1987).

Where a school director who was fired for immature and grossly unprofessional acts of mismanagement and misbehavior brought an action against school board members alleging bias, they were clothed with a presumption of honesty and integrity in their decision-making responsibilities. Thus, absent evidence that the board members had fixed and unchangeable opinions depriving the administrator of a fair hearing, it acted properly. ***Kizer v. Dorchester County Vocational Bd. of Trustees***, 340 S.E.2d 144 (S.C. 1986).

Immunity

School board members were not entitled to statutory immunity from charges of the intentional infliction of emotional distress or negligence where it was alleged that they knew of and refused to remove dangerous asbestos from school buildings; also, they were not entitled to immunity from negligence to the extent that they were covered by liability insurance. ***Deitsch v Tillery***, 833 S.W.2d 760 (Ark. 1992).

Where a school board member alleged civil rights violations and the intentional infliction of emotional distress after the acting chairperson called for his removal by the police due to his unruly behavior, the chairperson was not entitled to absolute immunity because he exercised an administrative function in calling for the board member's removal. ***Vacca v. Barletta***, 933 F.2d 31 (1st Cir. 1991).

Where a school board wrongfully terminated a district employee by eliminating his position and almost immediately hiring someone to perform his previous duties, the board members were not entitled to discretionary immunity because under the planning-operational standard for public employee immunity, they had not engaged in a policy decision involving the conscious balancing of risks and benefits in their dismissal of the employee. ***Mouchette v. Board of Educ., Oakland Unified Sch. Dist.***, 266 Cal. Rptr. 1 (Cal. Ct. App. 1990).

School board members were immune from a defamation suit by a discharged vice-principal after a public hearing where his allegedly defamatory evaluation was discussed because their action taken with respect to determining whether to dismiss him was pursuant to their statutory duty to employ qualified professional personnel. ***Malia v. Monchak***, 543 A.2d 184 (Pa. Commw. Ct. 1988).

An action for damages against individual school board members arising from injuries incurred by a six-year-old student at school on allegedly defective playground equipment was properly dismissed where they were sued in their official capacity since they were protected by governmental immunity absent charges that they acted wilfully, wantonly, or outside of the scope of their authority. ***McClendon v. Norwood***, 346 S.E.2d 1 (Ga. Ct. App. 1986).

A teacher's suit against board members for defamation arising out of a discussion over whether he may have been improperly reimbursed for liquor charges as part of his out-of-town travel and for work which he did not perform was properly dismissed since the board members had absolute privilege and were immune from charges of defamation in connection with the exercise of discretionary school functions. ***Grossman v. School Bd. of I.S.D. No. 640***, 389 N.W.2d 532, (Minn. Ct. App. 1986).

A school Human Relations Coordinator unsuccessfully brought suit against school board members alleging sexual harassment by her supervisor and retaliatory actions for her complaints which resulted in her demotion through a reorganization plan approved by the board where the alleged improper actions were legislative acts for which board members had absolute legislative immunity. Also, state law did not recognize claims against individual board members for failing to supervise district employee. ***Callaway v. Hafeman***, 628 F. Supp. 1478 (W.D. Wis 1986).

Generally

Where a teachers' union brought suit against a school board to pay its members who allegedly worked a portion of the time during which they were on strike, the statute providing for payment of wages at specified times did not apply to the board because it was not a corporation within the meaning of the law. ***Groveport Madison Local Educ. Ass'n v Groveport Madison Local Bd. of Educ.***, 594 N.E.2d 994 (Ohio Ct. App. 1991).

Where a city council legally enlarged its school board from five to seven members in December pursuant to a state law which permitted appointments to be made only between April 1 and April 15, the mayor's appointment of two new members in January was invalid. ***Orange Township Bd. of Educ. v. Brown***, 558 A.2d 520 (N.J. Super. Ct. App. Div. 1989).

It was not unconstitutional to suspend and remove a school board member from office upon his conviction of a felony because such an act in a prior term may provide grounds for removal during a later term. ***Spooner v. West Baton Rouge Parish Sch. Bd.***, 526 So. 2d 851 (La. Ct. App. 1988)

Board Powers and Functions

Employment Matters

A city schools chancellor did not exceed his authority in promulgating city-wide procedures for community school boards to follow in hiring school superintendents because although local boards have considerable authority to operate, responsibility for decision-making on a city-wide basis remained with the central board. ***Board of Educ. of Community Sch. Dist. No. 29 v. Fernandez***, 588 N.Y.S.2d 869 (N.Y. App. Div. 1992).

While a board of education lacked statutory authority to enter into supplemental contracts with nonteaching employees, it could promote them and grant them continuing status in their promoted classifications. ***Hall v. Lakeview Local Sch. Dist. Bd. of Educ.***, 588 N.E.2d 785 (Ohio 1992).

The power of school committees is coextensive with the authority conferred on them by the General Assembly and they do not enjoy any residual power beyond this on matters that may incidently affect school operations. Thus, the authority to determine whether early retirement incentives in a budget act were available to paraprofessional teachers aides was not bestowed on school committees, but on other local government entities. ***Greenhalgh v. City Council of City of Cranston***, 603 A.2d 1090 (R.I. 1992).

A teacher's motion for a preliminary injunction against a proposed psychiatric examination was properly denied where there was no evidence that it was intended as retaliation for her filing a civil rights action; also, it was not a violation of her constitutional right to privacy. ***Murray v. Pittsburgh Bd. of Educ.***, 759 F. Supp. 1178 (W.D. Pa. 1991).

The transfer of two teachers within the same school system was proper as it was not arbitrary and they teachers did not suffer any loss. ***Board of Educ. of Ashland v. Jayne***, 812 S.W.2d 129 (Ky. 1991).

A school board lacked the authority to include a provision requiring contractors to pay prevailing wage rates in the specifications for its construction projects since it was not necessary and incidental to its statutory power to erect school buildings, especially when this implicated statutes such as the Public Bid Law. Also, prescribing a minimum wage is a police power which cannot be exercised by a school

board absent express statutory authority. ***Louisiana Associated Gen. Contractors v. Calcasieu Parish Sch. Bd.***, 586 So. 2d 1354 (La. 1991).

While a school board can exercise those powers expressly granted it, those fairly implied or necessarily incidental to express powers, and those essential to its declared objects and purposes, in the absence of statutory authority a school board was not empowered to adopt a mandatory retirement policy based solely on age. ***Carlyle v. Independent Sch. Dist. No. I-71 of McCurtain County***, 811 P.2d 618 (Okla. Ct. App. 1991).

Although not expressly granted by statute, a school board had implicit discretion and authority to suspend a teacher for two days without pay and to require him to make restitution for removing the glossaries from the back of science textbooks. ***Board of Trustees of Hamilton Heights Sch. Corp. v. Landry***, 560 N.E.2d 102 (Ind. Ct. App. 1990).

The most obvious implied power gleaned from a school board's express powers is that it not be hampered in its responsibility to operate its schools. Thus, a board had the implied power to impose conditions on an extended leave of absence that was not mutually agreed upon by it and the teacher. ***Fisher v. Board of Educ. of West Washington County Community Unit Dist. No. 10***, 537 N.E.2d 354 (Ill. Ct. App. 1989).

Pursuant to state law, once a tenured teacher was undergoing remediation a local school board had no more responsibility or control over the teacher's dismissal or retention. ***Powell v. Board of Educ. of City of Peoria, Dist. 150***, 545 N.E.2d 767 (Ill. Ct. App. 1989).

Since school districts, as public employers, have broad powers in dealing with their staffs in order to achieve efficient governmental operations, the assignment of high school physical education teachers to take cardiac pulmonary resuscitation and lifesaving training classes during regular working hours and at no cost to them was not beyond the scope of the school's powers. ***Pleasant Valley Educ. Ass'n v. Pleasant Valley Community Sch. Dist.***, 449 N.W.2d 894 (Iowa Ct. App. 1989).

Although state law did not expressly authorize a school board to suspend a tenured teacher for disciplinary reasons, it derived authority to do so from a section of the School Code imposing on it the express duty "[to] adopt and enforce all necessary rules for the management and government of the public schools of their district." ***Spinelli v. Immanuel Lutheran Evangelical Congregation***, 515 N.E.2d 1222 (Ill. 1987).

Although specific functions conferred on school boards may not be delegated to others unless expressly authorized by law, a board has the authority to agree to provisions in a collective bargaining agreement allowing part-time teachers to transfer to full-time positions as this does not implicate a board's exclusive authority to employ teachers, it merely changes the teachers' assignments and salaries. ***Lake Washington Sch. Dist. No. 414 v. Lake Washington Educ. Ass'n***, 745 P.2d 504 (Wash. 1987), *am.*, 57 P.2d 533 (Wash. 1988).

Student Affairs

School board policies denying a county department of human resources the right to interview privately suspected child abuse victims at school transcended the statutory authority of boards where specific statutory provisions regarding child abuse were exceptions to the general authority given to boards to control all activities at school involving children. ***Decatur City Bd. of Educ. v. Aycock***, 562 So. 2d 1331 (Ala. Civ. App. 1990).

Where members of a religious group brought suit against a local school district alleging that state regulations requiring instruction about AIDS for all primary and secondary school students violated their right to the free exercise of religion, genuine issues of material fact on the burden this might have imposed on their free exercise rights and whether the state's compelling interest in AIDS education would be adversely affected by granting them an exemption precluded summary judgment. ***Ware v. Valley Stream High Sch. Dist.***, 551 N.Y.S.2d 167 (N.Y. 1989).

Local school committees act as agents for the state, discharging legislative responsibility for the care, control, and management of all public educational needs of resident children. Thus, youngsters in a private, nonprofit, residential facility for dependent and neglected children were residents of the town for school purposes and the committee had the obligation to provide them with a genuine opportunity to participate in special education programs. ***In re Children Residing at St. Aloysius Home***, 556 A.2d 552 (R.I. 1989).

Facilities

A school board's powers expressly provided by law as well as those vested by necessary implication are not to be extended by construction so that where authority is doubtful, it should not be exercised. Thus,

although their actions were unlawful, two school board members who voted in favor of an illegal expenditure of public funds for two deluxe commercial buses without state approval were not personally liable as the object was lawful and within a board's jurisdiction. However, hiring educational consultants to assist with the passage of a bond referendum was an unauthorized expenditure for which board members were liable. ***Smith v. Dorsey***, 599 So. 2d 529 (Miss. 1992).

A school district neither exceeded its authority nor engaged in borrowing or incurring indebtedness requiring voter approval where it had express statutory power to provide for construction or leases of buildings, had no direct contractual obligation to owners of certificates of participation, and was not limited by statute from disbursing funds to lease buildings when the funds were raised by levying taxes to operate schools. ***Dieck v. Unified Sch. Dist. of Antigo***, 477 N.W.2d 613 (Wis. 1991).

A school board had the authority to consolidate four high schools into one since even though the plan required the approval of the State Board of Education, school consolidation within a single district was not a statutory reorganization requiring a public referendum. ***In re Petition of 2,952 Registered Voters***, 574 So. 2d 619 (Miss. 1990).

An taxpayers association unsuccessfully sought mandamus against a school board to compel it to develop an educational facilities plan justifying the levy of taxes to retire bonds authorized by voters because mandamus only applies to duties owed to the public as purely ministerial; since the adoption of a plan by the school board for expenditures is discretionary, mandamus was not a proper remedy. ***Citizens Organized for Sensible Taxation v. St. Landry Parish Sch. Bd.***, 528 So. 2d 1048 (La. Ct. App. 1988).

Business Affairs

Where state law authorized city school committees to employ legal counsel, the provision in a city charter requiring mayoral approval of city contracts could not be invoked to impede a committee's employment of counsel or its making payments for legal services. ***School Comm. of Chicopee v. City of Chicopee***, 590 N.E.2d 1158 (Mass. 1992).

A dispute as to whether a state audit of a school board's financial transactions satisfied a statutory mandate calling for an additional independent audit was not a local controversy requiring the plaintiffs to participa te in a hearing before the board prior to seeking mandamus when the issue was the board's own conduct. ***Glynn County Bd. of Educ. v. Lane***, 407 S.E.2d 754 (Ga. 1991).

An intermediate school unit has only the power and authority granted it by the legislature. Thus, a state regulation which explicitly mandated that the board of directors of a school district is responsible to assure that pupil transportation vehicles had adequate insurance coverage did not apply to an intermediate unit. ***Kaufman v. Central Susquehanna Intermediate Unit #16***, 601 A.2d 412 (Pa. Commw. Ct. 1991).

A city board of education could not, in its discretion, create a surplus to offset anticipated out-year deficits by eliminating currently operating day-care programs and diverting monies earmarked to fund those programs since it is not an elected body; it must seek authority from the city council to levy taxes to balance its annual budget since the ultimate decision of whether particular programs are to be funded rests with the elected council. ***School Dist. of Philadelphia, Bd. of Educ. v. Council of Philadelphia***, 566 A.2d 352 (Pa. Commw. Ct, 1989), *appeal denied sub. nom.*, ***Gibson v. School Dist. of Philadelphia, Bd. of Educ.***, 582 A.2d 326 (Pa. 1990).

Miscellaneous

A school district lacked standing to challenge the nominating petitions of an individual who sought to become a political party's candidate for school director because as an administrative arm of the legislature, its authority springs only from legislative enactments. Thus, where the legislature had not granted the district any such authority, either directly or inferentially, the judiciary was precluded from doing so. ***In re Petition of Granat***, 590 A.2d 849 (Pa. Commw. Ct. 1991).

School district employees do not present regular claims for their salaries within the meaning of a law which required school district boards to publish a list of contract or tort claims within 10 days after each meeting. Thus, boards were not required to publish a list of the individual salaries of district employees. ***State ex rel. Thompson v. Alderman***, 431 N.W.2d 625 (Neb. 1988).

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Case Citations
SCHOOL DISTRICT ORGANIZATION: CREATION, ALTERATION AND DISSOLUTION

FIFTEENTH Series, Number 5

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Legislative Powers and Responsibilities

Generally

The creation of a special school district whose boundaries were contiguous with those of a village established and inhabited by an exclusive religious community violated both the establishment clause of the First Amendment of the United States Constitution and its state counterpart. ***Grumet v. Board of Educ. of the Kiryas Joel Village Sch. Dist.***, 592 N.Y.S.2d 123 (N.Y. App. Div. 1992).

Where the exclusive authority to form or consolidate school districts has been vested by the state legislature in county boards of education, a court had no authority to order a special election to settle a territorial dispute between districts. ***Charleston Sch. Dist. No. 9 v. Sebastian County Bd. of Educ.***, 778 S.W.2d 614 (Ark. 1989).

School Funding

A challenge to the inclusion of funding for the Child Care and Development Services Act within the guarantees of minimum levels of funding for education failed because the state legislature had the constitutional authority to include programs which advance, and hence support, the educational mission of school districts in exercising its plenary powers over education. ***California Teachers' Ass'n v. Huff***, 7 Cal. Rptr.2d 699 (Cal. Ct. App. 1992).

A school funding statute violated the state constitution even though it provided for guaranteed revenue per student for each cent of local tax effort over a specified minimum; since it neither changed school district boundaries to allow for tax base equalization among districts nor altered the basic funding allocation between state and local property tax revenues it failed to remedy the major causes of wide opportunity gaps between rich and poor districts. ***Edgewood Indep. Sch. Dist. v. Kirby***, 804 S.W.2d 491 (Tex. 1991).

Districts' Legal Status and Scope of Authority

A contractor's association could enjoin a school board from requiring contracts for public works projects to contain prevailing wage provisions because as a quasi-municipal corporation the board enjoyed only those powers conferred upon it or delegated to it by the state. The board's authority under the Public Bid Law to present and advertise contracts, plans, and specifications it deems appropriate for a project did not include the right to specify prevailing wage rates to be paid on the projects. ***Louisiana Associated Gen. Contractors v. Calcasieu Parish Sch. Bd.***, 586 So. 2d 1354 (La. 1991).

Where a newly consolidated school district assumed all of the assets and liabilities of three preconsolidation districts, it was qualified to retain the continued employment exception from Medicare taxation. ***Board of Educ. of Muhlenberg County, Ky. v. United States***, 920 F.2d 370 (6th Cir. 1990).

When possession of a school was transferred from a township to a school corporation as part of the township's reorganization, title to the school also passed since the statute authorizing reorganization intended to transfer title to real property as well as other assets, liabilities, and contracts. ***Schilling v. Lafayette Sch. Corp., Bd. of Sch. Trustees***, 537 N.E.2d 69 (Ind. Ct. App. 1989).

School District Reorganization Consolidation and Merger

Generally

A State Board of Education had the authority to deny severance and order a study of the potential impact of regionalization of three separate school districts in order to accomplish school desegregation. ***Board of Ed[illegible] of the Borough of Englewood Cliffs, Bergen Coun[illegible] v. Board of Educ. of the City of Englewood, Bergen County***, 608 A.2d 914 (N.J. Super. Ct. App. Div. 1992).

A plan to consolidate four high schools into one did not constitute reorganization of a school district since it did not alter the district's corporate structure. Thus, the school board was not required to give notice of intent to consolidate or conduct a public referendum on its consolidation plan. ***Petition of 2,952 Registered Voters of Wayne County, In Opposition to Reorganization of Wayne County Sch. Dist. v. Wayne County Bd. of Educ.***, 574 So. 2d 619 (Miss. 1990).

A school board's petition for merger with another district did not reflect a separate resolution that in accepting the merger, the surviving district would continue to maintain an elementary school at a specified location where the reorganization of the two districts was governed by the reorganization petition and its final approval by the county superintendent. A separate resolution over the maintenance of

the school in question was of no effect since it was not filed and the state reorganization committee was not notified. ***Sevier v. School Dist. HC1, Hooker County, Mullen***, 444 N.W.2d 897 (Neb. 1989).

Where the State Superintendent of Education approved a consolidation petition to combine two school districts based on the possibility of improved educational facility utilization, curriculum improvement, utilization of personnel, and enhancement of music and band programs, it was of no effect that the regional superintendent who conducted the initial hearings on the petition was a candidate for reclusion at time of hearings. ***Bromberek Sch. Dist. No. 65 v. Sanders***, 528 N.E.2d 1336 (Ill. App. Ct. 1988).

Procedure

Where state law provides alternative methods for the consolidation of existing school districts including voter petition and board to board proposals, the latter are as efficacious as the former. Thus, a county superintendent must carry out a petition if it contains sufficient valid signatures. ***Leibbrandt v. Lomax***, 423 N.W.2d 453 (Neb. 1988).

Voters who approved the dissolution of their school district and its annexation by another were not entitled to reconsider their vote for consolidation since a revote may be taken only when consolidation is disapproved. ***Dannemora Union Free Sch. Dist. v. Sobol***, 531 N.Y.S.2d 498 (N.Y. Sup. Ct. 1988).

School District Reorganization: Minor Alterations of Boundaries

Generally

A school board's modification of a petition by homeowners who sought a minor change in the school district's boundary exceeded its authority where state law granted it the power to either approve or disapprove the entire petition without any discretion. ***Aman v. Edminds Cent. Sch. Dist. No. 22-5***,494 N.W.2d 198 (S.D. 1992).

The State Commissioner of Education properly denied a board of education's request for a change in its district boundary line to include 38 parcels of residential property that had inexplicably appeared on its tax roles six years earlier where the educational interests of the children involved would not be adversely affected by the boundary line's remaining intact. ***Board of Education of the Shenendehowa Cent. Sch. Dist. v. Sobol***, 582 N.Y.S.2d 825 (N.Y. App. Div. 1992).

Property owners successfully petitioned to detach their property from their present school district and attach it to another where the losing district would not suffer substantial detriment and the evidence supported a finding that the educational welfare of their children would be enhanced by the detachment. ***Fosdyck v. Regional Bd. of Sch. Trustees***, 599 N.E.2d 70 (Ill. App. Ct. 1992).

Parents unsuccessfully sought to have their property detached from one school district and annexed to another where both districts offered comparable education programs, the annexing school was actually further from their home, and the only significant gain from granting the petition would accrue to the parents of the students living in the area to be detached. ***Carver v. Board/Fayette/Effingham Regional Bd. of Sch. Trustees***, 586 N E.2d 1273 (Ill. 1992).

Parents successfully petitioned to detach their property and annex it to another school district where the detaching district did not provide transportation service to their small children who would have had to travel though a hazardous area and the annexing district provided bus service which passed by their home; also, the tax base of the detaching district would not be harmed. ***Utica Grade Sch. Dist. No. 135 v. Skolek***, 597 N.E.2d 919 (Ill. App. Ct. 1992).

A regional board of school trustees properly denied a petition seeking detachment of a large track of land from one school district and its annexation to another where the facilities of both districts were substantially similar, there was no identification of area with one district or the other, and no one currently lived on the property; for a detachment and annexation petition to be granted, the benefit to both districts must clearly outweigh the detriment to the detaching district and the surrounding community. ***First Nat'l Bank of Elgin v. West Aurora Sch. Dist. 129***, 558 N.E.2d 687 (Ill. App. Ct. 1990).

Parents unsuccessfully petitioned for a transfer of their property from one school district to another where the evidence showed that detachment would be solely for their personal preference and convenience. ***Ikemire v. Regional Bd. of Sch. Trustees***, 558 N.E.2d 294 (Ill. App. Ct. 1990).

Several parents unsuccessfully petitioned to have their property detached from one school district and annexed to another after their former district was dissolved and annexed to the detaching district due to declining enrollment; even though 70% of the area's residents signed the petition it was denied because the detaching district offered better educational and extracurricular opportunities and the area to be detached was situated an equal distance from the schools. ***Steichen v. Lemon***, 548 N.E.2d 1385 (Ill. App. Ct. 1990).

Two residential tracts connected by a non-residential tract could be properly detached and annexed even though one of them did not abut the annexing district where the entire territory covered could be included in a common boundary line without any intervening spaces; under the state detachment and annexation statute, territories may be detached from one district and annexed to another if they are contiguous, meaning that they may be included in a common boundary line without any intervening spaces. ***Prosper Indep. Sch. Dist. v. Central Educ. Agency***, 798 S.W.2d 661 (Tex. Ct. App. 1990).

A detachment and annexation petition may be granted even if no students reside in the area to be detached where there is evidence regarding the educational welfare of immediately foreseeable pupils. ***Pontiac Township High Sch. Dist. No. 90 v. Regional Bd. of Sch. Trustees for Livingston County***, 539 N.E.2d 885 (Ill. App. Ct. 1989).

Where a petition for a minor boundary change was granted and later revoked by a local school district over its concern that the change would create a "domino effect" resulting in additional similar requests and diminution of its tax base, the State Superintendent of Education properly reversed the district's denial of the petition because it was based solely on financial concerns. ***McLaughlin Sch. Dist. 15-2 v. Kosters***, 441 N.W.2d 682 (S.D. 1989).

Where a residential subdivision appeared in the tax rolls of a city school district for 15 years even though it was located within the boundaries of another district and the district within which it was located refused to consent to a change in boundary lines which would permit students in the area to continue attending school in the city district, the State Commissioner of Education properly determined that the refusal to consent to the boundary change was unreasonable since it would force students to transfer schools. ***Schuylerville Cent. Sch. Dist. v. Commissioner of Educ. of State of N.Y.***, 549 N.Y.S.2d 447 (N.Y. App. Div. 1989).

A school district which is opposed to the transfer of property within its boundaries to another district must consider the adverse impact on children in the area to be detached rather than the impact of the transfer on the education of all children in the district. ***Rural Dell Sch. Dist. v. Board of Educ.***, 775 P.2d 852 (Or. Ct. App. 1989).

Where school districts denied a petition for detachment of real estate from one district to another but the Appeal Board granted the petition, the individuals aggrieved by the Board's decision were entitled to a referendum on its order. ***State ex rel. Dieckhoff v. Severson***, 426 N.W.2d 71 (Wis. Ct. App. 1988).

Procedure

A regional board of school trustees which granted a petition to change school district boundaries did not lose its jurisdiction when one of the members of the committee on the petition moved out of the petitioning territory; also, the local districts could not assert a claim that the regional board's decision to grant the detachment was void from the outset due to its failure to adopt rules of practice prior to the administrative hearing because by not raising the issue at that time they were precluded from doing so upon administrative review. ***Board of Educ. of Community High Sch. Dist. No. 94 v. Regional Bd. of Sch. Trustees of Du Page County***, 608 N.E.2d 517 (Ill. App. Ct. 1992).

The petition requesting the transfer of territory from one school district to another was valid even though there was an inconsistency between the map and the legal description of the transfer area where the average voter relied upon the map rather than the legal description which listed lot numbers not actually included in area subject to the proposed transfer. ***Garfield Heights City Sch. Dist. v. State Bd. of Educ.***, 575 N.E.2d 503 (Ohio Ct. App. 1990).

An informal preliminary vote by county commissioners prior to the public meeting at which they approved a detachment and annexation petition was not evidence of bad faith sufficient to taint the decision-making process. ***Prosper Indep. Sch. Dist. v. Central Educ. Agency***, 798 S.W.2d 661 (Tex. Ct. App. 1990).

A state statutory provision requiring school districts to file petitions with the State Board of Education for the proposed transfer of an area from one district to another only requires the filing of petitions that are determined to be sufficient under the law. ***State ex rel. Harrell v. Board of Educ. of Streetsboro City Sch. Dist.***, 544 N.E.2d 924 (Ohio 1989).

Where the petition to transfer a parcel of land from one school district to another did not include the signature of one of the property owners, it could not be granted. ***Butte Creek Sch. Dist. No. 675 v. Clackamas County Dist. Boundary Bd.***, 754 P.2d 926 (Or. Ct. App. 1988).

Since a state law provides alternatively for the discretionary or mandatory transfer of property between school districts, a district lacked standing

to compel action on a resident's petition for a mandatory transfer following the failure of its own petition for a discretionary transfer. ***Steilacoom Historical Sch. Dist. No. 1 v. Winter***, 763 P.2d 1223 (Wash. 1988).

Residents who signed a petition proposing to transfer part of their district to another school district are permitted to withdraw their signatures any time prior to official action on the petition by the school board. ***State ex rel. Bd. of Educ. for Fairview Park Sch. Dist. v. Board of Educ. for Rocky River Sch. Dist.***, 532 N.E.2d 715 (Ohio 1988).

Apportionment of Assets and Liabilities

An order detaching property from one school district and annexing it to another was valid even though it did not allocate the indebtedness of the transferring district because an order allocating indebtedness may be reserved for a future date. ***Prosper Indep. Sch. Dist. v. Central Educ. Agency***, 798 S.W.2d 661 (Tex. Ct. App. 1990).

Judicial Review of School District Reorganization

Where there was evidence that the makeup of preexisting school districts had changed through the process of petitioning and voting together with testimony of property owners confirming variations in boundary lines as they existed at the time of reorganization, a trial court's judgment setting of the boundary between two districts was proper. ***Oak Ridge Reorganzied Sch. Dist. v. Jackson Reorganzied Sch. Dist. No. R-2***, 830 S.W.2d 45 (Mo. Ct. App. 1992).

When reviewing an order of a regional board of school trustees which denied a petition to detach property from one school district and annex it to another, a court must examine evidence in impartial manner and set the order aside only if it is unsupported by facts in the record. ***Utica Grade Sch. Dist. No. 135 v. Skolek***, 597 N.E.2d 919 (Ill. App. Ct. 1992).

A trial court's order was upheld since it did not abuse its discretion in affirming an order of the State Board of Education order which approved the transfer of a parcel of real property from one school district to another; the affected children already attended the transferee district on a tuition basis, the schools they went to were closer to their home, and the transferee community was the focus of the family's social, business, and community life. ***Board of Educ. of the Rossford Exempted Village Sch. Dist. v. State Bd. of Educ.***, 590 N.E.2d 1240 (Ohio 1992).

Where the evidence supported a trial court's finding that a school board abused its discretion in denying a boundary change to petitioners whose business, social, and religious activities were almost entirely in the district they sought to transfer to, it properly reversed the board's decision in favor of the petitioners. ***Kellogg v. Hoven Sch. Dist. No. 53-2***, 479 N.W.2d 147 (S.D. 1991).

Where a complaint for administrative review of the denial of a detachment-annexation petition failed to join the detaching school district as a defendant, a trial court lacked jurisdiction over the complaint. ***Spicer, Inc. v. Regional Board of Sch. Trustees of LaSalle County***, 570 N.E.2d 678 (Ill. App. Ct. 1991).

A property owner was entitled to judicial review of the State Board of Education's denial of its request to transfer property from one school district to another because the State Board's disapproval of the transfer petition was a quasi-judicial act and, as such, was appealable. ***Union Title Co. v. State Bd. of Educ.***, 555 N.E.2d 931 (Ohio 1990).

Individual taxpayers unsuccessfully initiated an Article 78 proceeding to compel the State Commissioner of Education to revise the state plan for school district reorganization to provide for the desired merger of two school districts where they failed to exhaust administrative remedies before filing suit. ***Cario v. Sobol***, 557 N.Y.S.2d 592 (N.Y. App. Div. 1990).

Decisions concerning transfer petitions of property from one school district to another must be based on findings of fact which are adequate to enable a reviewing court to understand the basis of any such decision; the mere recitation of testimony and evidence presented at the transfer hearing absent explicit findings relating to the evidence is insufficient. ***Dunseith Pub. Sch. Dist No. 1 of Rolette County v. State Bd. of Pub. Educ. of the State of N.D.***, 437 N.W.2d 825 (N.D. 1989).

The role of the judiciary in an administrative review of a decision regarding a detachment-annexation petition is limited to a determination of whether the action of the regional board of school trustees complied with statutory standards and was supported by the manifest weight of the evidence. ***Desmond v. Regional Bd. of Sch. Trustees, Malta Community Unit Sch. Dist. No. 433***, 538 N.E.2d 1350 (Ill. App. Ct. 1989).

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